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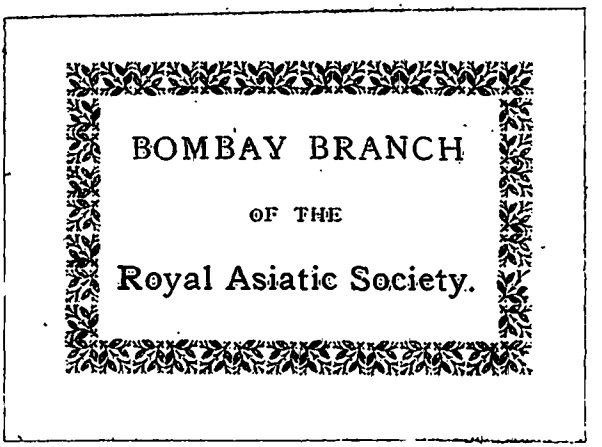

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THE

LIVES

OF

THE CHIEF JUSTICES

OF

ENGLAND.

FROM THE NORMAN CONQUEST TILL THE DEATH OF LORD MANSFIELD.

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BY

JOHN LORD CAMPBELL, LL.D. F.R.S.E.

AUTHOR OF

"THE LIVES OF THE LORD CHANCELLORS OF ENGLAND."

IN TWO VOLUMES.

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TO

THE HONORABLE

DUDLEY CAMPBELL.

My dear Dudley,

As you have chosen the noble though arduous profession of the Law, I dedicate to you the Lives of the Chief Justices, in the hope that they may stimulate in your bosom a laudable ambition to excel, and that they may teach you industry, energy, perseverance, and self-denial. Learn that, by the exercise of these virtues, there is no eminence to which you may not aspire, — and, from the examples here set before you, ever bear in mind that truly enviable reputation is only to be acquired by independence of character, by political consistency, and by spotless purity both in public and private life.

I cannot hope to see you enjoying high professional distinction; but, when I am gone, you may rescue my name from oblivion, and, if I should be forgotten by all the world besides, *you* will tenderly remember

Your ever affectionate Father,

CAMPBELL.

PREFACE.

My original design was to be the biographer of the most eminent Magistrates who have presided in Westminster Hall. This was not completed by writing the LIVES OF THE CHANCELLORS, for many of our most important and interesting legal worthies never held the Great Seal. Some of them—as LORD COKE and LORD HALE—had not the offer of it, from the preference naturally given to mediocrity; and others—as LORD HOLT and LORD MANSFIELD—resolutely refused the offer, because they preferred the functions of a Common Law Judge. I should not, therefore, have contributed my proposed share of honour to the deceased, or of instruction to the rising generation, without adding the LIVES OF THE CHIEF JUSTICES.

I confess, likewise, that I was eager to trace the history of those who had illustrated the department of English jurisprudence to which, while at the bar, I chiefly addicted myself. I may not be altogether unqualified for the task, as I have been long familiar with their characters, and I am entitled to speak with some little confidence of their decisions.

However, I cannot venture to draw the CHIEF JUSTICES at full length in a consecutive series. The CHANCELLORS,

although sometimes insignificant as individuals, were all necessarily mixed up with the political struggles and the historical events of the times in which they flourished; but CHIEF JUSTICES occasionally had been quite obscure till they were elevated to the bench, and then, confining themselves to the routine discharge of their official duties, were known only to have decided such questions as "whether beasts of the plough taken in *vetito namio* may be replevied?" So many of them as I could not reasonably hope to make entertaining or edifying, I have used the freedom to pass over entirely, or with very slight notice. But the high qualities and splendid career of others in the list have excited in me the warmest admiration. To these I have devoted myself with unabated diligence; and I hope that the wearers of the "Collar of SS" * may be deemed fit companions for the occupiers of the "Marble Chair," who have been so cordially welcomed by the Public.

I have been favoured with a considerable body of new information from the families of the later Chief Justices, — of Lord Chief Justice Holt, Lord Chief Justice Lee, and Lord Chief Justice Ryder. But my special thanks are due to my friend Lord Murray, Judge of the Supreme Court in Scotland, for the valuable materials with which he has supplied me for the Life of his illustrious kinsman, Lord Mansfield, hitherto so strangely neglected or misrepresented.

I had intended to add the Lives of LORD KENYON, LORD ELLENBOROUGH, and LORD TENTERDEN,—well recollecting the first when I was a law student, and having practised many years under the two others. But I am afraid of hurting the feelings of surviving relations and friends; and whatever other biographical sketches I may compose I shall leave

* This has been from great antiquity the decoration of the Chief Justices. Dugdale says it is derived from the name of SAINT SIMPLICIUS, a Christian Judge, who suffered martyrdom under the Emperor Dioclesian: "Geminæ vero S S indicabant Sancti Simplicii nomen."—(Or. Jur. xxxv.)

to be given to the world when this risk has passed away, and when the author will be beyond the reach of human censure. In taking farewell of the Public, I beg permission to return my sincere thanks for the kindness I have experienced both from friends and strangers who have pointed out mistakes and supplied deficiencies in my biographical works,—and earnestly to solicit a continuance of similar favours.

Stratheden House,
Aug. 10. 1849.

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LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

CHAPTER I.

LIVES OF THE CHIEF JUSTICES FROM THE CONQUEST TO THE REIGN OF EDWARD I.

CHAP. I.

THE office of CHIEF JUSTICE, or CHIEF JUSTICIAR, was introduced into England by William the Conqueror from Normandy, where it had long existed.* The functions of such an officer would have ill accorded with the notions of our Anglo-Saxon ancestors, who had a great antipathy to centralisation, and prided themselves upon enjoying the rights and the advantages of self-government. The shires being parcelled into hundreds, and other subdivisions, each of these had a court, in which suits, both civil and criminal, might be commenced. A more extensive jurisdiction was exercised by the County Court, a tribunal of high dignity, over which the Bishop, and the Earl, or Alderman, presided jointly. Cases of importance and difficulty were occasionally brought by appeal before the Witenagemote, and here they were disposed of by the voice of the majority of those who constituted this

Origin and functions of the office of Chief Justiciar, or Chief Justice, of England.

* Of the two names "Justice" and "Justiciar," we have this account by Spelman: "*Justitia* al. *Justitiarius*. Prior vox in juris nostri formulis, solummodò videtur usitata, usque ad ætatem Henrici 3. alterâ jam se efferente, hæc paulatim disparuit: sed inde hodie in vernaculo et juris annalibus Gallico-Normanicis '*a*' vel '*un Justice*' dicimus, non '*Justicer.*'" In Scotland, where this office was introduced, along with almost every other which existed in England under the Norman kings, the word *Justitiarius* prevailed, and hence we now have the "Court of JUSTICIARY." See "Lives of the Chancellors," vol. i. p. 5.

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assembly. We do find, in the Anglo-Saxon records, a notice of "Totius Angliæ Aldermannus," but such a creation seems to have taken place only on rare emergencies, and we have no certain account of the duties intrusted to the person so designated.* In Normandy the interference of the supreme government was much more active than in England, and there existed an officer called CHIEF JUSTICIAR, who superintended the administration of justice over the whole dukedom, and on whom, according to the manners of the age, both military and civil powers of great magnitude were conferred.†

Before William had entirely completed his subjugation of England, eager to introduce into it the laws and institutions of his own country, so favourable to princely prerogative,—while he separated the civil and ecclesiastical jurisdiction, and confined the County Court (from which the Bishop was banished) to the cognizance of petty suits,—preparatory to the establishment of the feudal system in its utmost rigour, he constituted the office of CHIEF JUSTICIAR. His plan was to have a grand central tribunal for the whole realm, which should not only be a court of appeal, but in which all causes of importance should originate and be finally decided. This was afterwards called CURIA REGIS, and sometimes AULA REGIS, because it assembled in the hall of the King's palace. The great officers of state, the Constable, the Mareschal, the Seneschal, the Chamberlain, and the Treasurer, were the judges, and over them presided the Grand Justiciar. "Next to the King himself, he was chief in power and authority, and when the King was beyond seas (which frequently hap-

* Dugd. Or. Jur. ch. vii. Mad. Ex. ch. i. Spel. Gloss. "Justitia." Lord Coke's 2d Inst. ch. vii.

† It is curious to observe that, notwithstanding the sweeping change of laws and institutions introduced at the Conquest, the characteristic difference between Frenchmen and Englishmen, in the management of local affairs, still exists after the lapse of so many centuries; and that while with us parish vestries, town councils, and county sessions, are the organs of the petty confederated republics into which England is parcelled out,—in France, whether the form of government be nominally monarchical or republican, no one can alter the direction of a road, build a bridge, or open a mine, without the authority of the "Ministre des *Ponts et Chaussées.*" In Ireland, there being much more Celtic than Anglo-Saxon blood, no self-reliance is felt, and a disposition prevails to throw every thing upon the government.

pened) he governed the realm like a vice roy."* He was at all times the guardian of the public peace as Coroner-General†, and he likewise had a control over the finances of the kingdom.‡ In rank he had precedence of all the nobility, and his power was greater than that of all other magistrates.§

The administration of justice continued nearly on the same footing for eight reigns, extending over rather more than two centuries. Although, during the whole of this period, the AULA REGIS was preserved, yet, for convenience, causes, according to their different natures, were gradually assigned to different committees of it,—to which may be traced the Court of King's Bench, the Court of Common Pleas, the Court of Exchequer, and the Court of Chancery. A distinct tribunal for civil actions was rendered necessary, and was fixed at Westminster by the enactment of MAGNA CHARTA—"Communia placita non sequantur curiam nostram, sed teneantur in aliquo certo loco;" but the suitors in other causes were long after obliged to resort alternately to York, Winchester, Gloucester, and other towns, in which the King sojourned at different seasons of the year.‖ At last a great legislator modelled our judicial institutions almost exactly in the fashion in which, after a lapse of six centuries, they present themselves to us at the present day, showing a fixity unexampled in the history of any other nation.

The Chief Justiciar was then considerably lowered in rank and power, but the identity of the office is to be distinctly traced, and therefore it will be proper that I should introduce to the reader some of the individuals who filled it in its greatest splendour.

* Madd. Exch. xi., where it is said "he was wont to be styled Justicia Regis, Justiciarius Regis, and absolutely Justicia or Justiciarius; afterwards he was sometimes styled *Justiciarius Regis Angliæ*, probably to distinguish him from the King's Justiciar of Ireland, Normandy," &c.

† The Chief Justice of the King's Bench is still Chief Coroner of England.

‡ It is supposed to be a remnant of this power, that, upon the sudden death or resignation of the Chancellor of the Exchequer, the Chief Justice of the King's Bench does the formal duties of the office till a successor is appointed.

§ "Dignitate omnes regni proceres, potestate omnes superabat magistratus." —*Spel. Gloss.* p. 331.

‖ The Court of King's Bench is still supposed to be ambulatory, and by original writs the King orders the defendant to appear on a day named, "wheresoever we shall then be in England."

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Odo the first Chief Justiciar.

The first Chief Justiciar of England was Odo. The beautiful Arlotta, the tanner's daughter of *Falaise*, who, standing at her father's door, had captivated Robert, Duke of Normandy,—after living with him as his mistress, bringing him a son, the founder of the royal line of England, lamenting his departure for the Holy Land, and weeping for his death,—was married to Herluin, a Norman knight, by whom she had

His birth.

three children. Odo, the second of these *, possessing bright parts and an athletic frame, was bred both to letters and to arms, and, while he took holy orders, he still distinguished himself in all knightly achievements. He was a special favourite with his brother the young Duke, who made him at an early age Bishop of Bayeux. Nevertheless he still continued to assist in the military enterprises by which William extended and consolidated his continental dominions, and attracted warriors from all the surrounding states to flock to his standard.

A.D. 1066. He accompanies William the Conqueror in the invasion of England.

When, on the death of Edward the Confessor, the Duke of Normandy claimed the crown of England, and prepared to wrest it from the perjured Harold, Odo preached the crusade in the pulpit, and zealously exerted himself in levying and training the troops. From Bayeux he carried a chosen band of men-at-arms in ten ships, with which he joined the main fleet at a short distance from St. Valery. He was one of the first to jump ashore at Pevensey, and he continued to ply his double trade of a priest and a soldier. At daybreak of the ever-memorable 15th of October, 1066, he celebrated mass in the Norman camp, wearing a coat of mail under his rochet. He then mounted a gallant white charger, carried a marshal's baton in his hand, and drew up the cavalry, with the command of which he was intrusted. In the fight he performed prodigies of valour, and he mainly contributed to the victory which had such an influence on the destinies of England and of France. The famous Bayeux tapestry represents him on horseback, and in complete armour, but without any sword, and bearing a staff only in his hand,

* The eldest was Robert, Earl of Mortaigne; and the youngest a daughter, Countess of Albemarle. Will. Gem. vii. 3.; viii. 37. Pict. 153. 211. Orderic. 255.

with the superscription "Hic Odo Epis. baculum tenens confortat," as if he had merely encouraged the soldiers. Although there might be a decency in mitigating his military prowess in the eyes of those whose souls he had in cure, there is no doubt that on this day he acted the part of a skilful cavalry officer and of a valiant trooper. A.D. 1066.

When the ceremony of the coronation was to take place in Westminster Abbey, he wished to consecrate the new monarch, and to put the diadem on his head; but, to soften the mortification of the English, and to favour the delusion that the kingdom was to be held under the will of the Confessor and by the voluntary choice of the people, Aldred the Archbishop of York was preferred, and he asked the assembled multitude "if they would have William for their King?" Odo, as a reward for his services, received a grant of large possessions in Kent, and was created Earl of that county. In contemplation of the establishment of the AULA REGIS, by the agency of which the Norman jurisprudence was to be introduced into England, and Norman domination perpetuated there, Odo was likewise appointed GRAND JUSTICIAR. Like many ecclesiastics of that time, he had attended to the Roman civil law and the learning of feuds, as well as to the canon law; and it was expected that he would be useful not only in judicial proceedings, but in the meetings of the national assembly, by which the Conqueror thought of giving an appearance of legality to his rule. He is appointed Chief Justiciar.

This arrangement was highly successful; and so quiet did all things appear to be in England, that in the following year William returned to Normandy to show his new grandeur to his countrymen, and remained there eight months, taking with him Edgar Atheling, the legitimate heir to the throne, and many of the principal English nobility. Odo was left behind as Justiciar; and William Fitz-Osborne, a redoubted knight, related to the ducal family, was associated with him in the regency. The Norman chroniclers pretend that Odo on this occasion displayed prudence and humanity, but had to encounter fickleness and ingratitude; while the Saxon chroniclers assert that he oppressed and A.D. 1067.

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insulted the natives so as to drive them into rebellion. The result was a general insurrection all over England, and William was obliged to return and to reconquer the kingdom. Odo was again most useful to him both in council and in the field, and was confirmed in his office of Justiciar, which he exercised for some years with undivided sway. Henry of Huntingdon, after giving an account of William having put down all resistance, and of the splendor of his court, enumerates among the grandees present "*Odo Episcopus Baiocensis, Justiciarius et Princeps totius Angliæ.*"*

A.D. 1068—1082. Cause tried before him.

I find the report of only one cause tried before him, *Gundulph, Bishop of Rochester* v. *Pechot, Sheriff of Cambridgeshire.* The defendant had seised the land of *Fracenham* in right of the King, and it was claimed by the plaintiff in right of his Church. The King ordered the trial to take place before Odo, the Grand Justiciar. He, going to the spot, summoned a folkmote, or general meeting of the freeholders, who, after an impartial summing up, found a verdict for the Crown.†

There was another trial of high interest soon after, at which Odo, the Justiciar, could not well preside, as he was the party sued. Lanfranc, an Italian ecclesiastic, having succeeded Stigand, the Saxon, as primate, complained that the Earl of Kent unlawfully kept possession of large territories, in that county, which of right belonged to the See of Canterbury. Geoffrey, Bishop of Coutance, was specially appointed by the King to act as Justiciar on this occasion. The trial took place in a temporary court erected on Penenden Heath, and lasted three days; at the end of which time judgment was given for the Archbishop against the Earl.‡

* L. vi. p. 371. The Saxon Chronicle says, "Fuit (Odo) admodum potens Episcopus in Normannia et Regi omnium maxime fidelis. Habuit autem comitatum in Anglia et quum Rex erat in Normannia fuit ille primus in hac terra." — *Chron. Sax.* p. 190. n. 20. 25.

† "Hanc enim Vicecomes Regis esse terram dicebat; sed Episcopus eandem S. Andreæ potius esse affirmabat. Quare ante Regem venerunt. Rex vero præcepit, ut omnes illius comitatus homines congregarentur et eorum judicio cujus terra deberet rectius esse probaretur," &c. — *Ex Ernulfi, Hist. apud Angl. Sax.*, t. i. p. 339.

‡ The report of the case, one of the earliest to be found in our books, thus begins: "De placito apud Pinendenam, inter Lanfrancum Archiopiscopum,

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Odo, however, was soon indemnified from the spoils of the Anglo-Saxon nobles; and being allowed, notwithstanding heavy complaints against him, to retain his office of Chief Justiciar, he amassed immense riches. By turns he officiated as a prelate, celebrating mass in the King's chapel, — he sat as supreme judge in the AULA REGIS, — and he commanded the King's troops in putting down insurrections.* Although scrupulous when presiding on the bench, it is said that when intrusted with a military command he thought it unnecessary to discriminate between guilt and innocence; he executed without investigation all natives who fell into his hands, and he ravaged the whole country.†

A.D. 1082. His quarrel with the King.

After he had held his office of Chief Justiciar nearly fifteen years, he quarrelled with the King, by entering into a mad enterprise which might have materially weakened the Norman power in England. An astrologer had foretold that he should reach the papacy and become sovereign of all Italy. The fortune of Guiscard, in Sicily, had excited the most extravagant expectations among his countrymen, and they openly boasted that the whole of Europe would soon be under Norman rule. Odo expected to gain his object, partly by corruption, and partly by force of arms. Gregory, the reigning Pope, was still in the vigour of manhood, but somehow a vacancy was to be occasioned, and was to be filled up by the Bishop of Bayeux. With this view he bought a stately palace at Rome; he transmitted immense sums of money to Italy; and he induced Hugh, Earl of Chester, and a number of other Norman nobles settled in Eng-

et Odonem Baiocensem Episcopum. Tempore Magni Regis Wilielmi qui Anglicum regnum armis conquisivit, &c. Huic placito interfuerunt Gorsfridus Constantiensis, qui in loco Regis fuit et Justiciam illam tenuit; Lanfrancus Episcopus qui placitavit; Comes Cantiæ, &c. et alii multi Barones Regis et ipsius Archiopiscopi, et alii aliorum comitatuum homines etiam cum isto toto comitatu, multi et magnæ auctoritatis viri Francigenæ scilicet et Angli," &c. —*Ex Ernulfi, Hist. apud Angl. Sax.*, t. i. p. 234. It was clearly proved that, while Stigand was in disgrace, Odo had taken possession of many manors belonging to the archbishopric. See the proceedings at length in Selden's Spicilegium, p. 197.

* " In seculari ejus functione, non solùm rem exercuit judiciariam: sed bellis utique assuefactus exercitum Randulphi Comitis Estangliæ, suorumque confederatorum, profligavit: et in ultione necis Walteri Dunelmensis Episcopi, Northumbriam late populatus est."— *Spel. Gloss.* p. 337.

† Sim. 47. Malm. 62. Chron. Sax. 184. Flor. 639.

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land, to whom he promised Italian principalities, to join him, accompanied by a considerable body of military retainers, and to embark with him for a port in the Mediterranean. This enterprise had been carefully concealed from the knowledge of the King. But William, hearing of it before the fleet sailed, highly disapproved of it, dreading that, after such a loss of treasure and soldiers, the mutinous Anglo-Saxons might shake off his yoke. He therefore seized the money and stores prepared for the enterprise, and gave orders that Odo should be arrested. The officers of justice, out of respect for the immunities which ecclesiastics now assumed, scrupled to execute the command. William thereupon arrested his brother with his own hands. Odo insisted that he was a prelate, and therefore exempt from all temporal jurisdiction; whereupon William exclaimed, "God forbid that I should touch the Bishop of Bayeux, but I make the Earl of Kent my prisoner." The Earl-Bishop was immediately sent over to Normandy, and kept in close confinement there for five years among many other state prisoners.*

Sept. 1087. He is liberated from imprisonment.

At last, the Conqueror being on his death-bed, it was suggested to him by his ghostly advisers, that if he hoped for mercy from God he ought to show mercy to man, and to set at liberty the noble captives whom he had long immured in the dungeons of Rouen. After trying to justify their detention, partly on the ground of their treasons, partly on the plea of necessity, he assented to the request, but long insisted on excepting his brother Odo, a man, he observed, whose turbulence would be the ruin both of England and Normandy. The friends of the prelate, by repeated solicitations, extorted from the reluctant monarch an order for his immediate enlargement.

Odo, at the moment when he recovered his liberty, hearing that the Conqueror had expired, and that his naked corpse lay neglected on the floor of a chamber of the deserted palace, instead of seeing to the decent interment of his brother and benefactor, proceeded with all speed to England to make

* Chron. Sax. 184. Flor. 641. Malm. 63. H. Hunt. 731. Angl. Sax. i. 258.

advantage of the election to the vacant throne. On condition of being restored to all his vast estates in Kent, and to his office of Chief Justiciar, he agreed to support the claim of Rufus, and assisted at the coronation of the new sovereign.* Accordingly, he presided in the sittings of the AULA REGIS held at the Feast of Christmas, 1087, and the Feast of Easter, 1088. But his unreasonable demands of further aggrandisement being refused, and his resentment being inflamed against Lanfranc the primate, to whom he imputed his sufferings in the end of the last reign, as well as his present disappointment, he entered into a conspiracy with Geoffrey de Coutance, Roger Montgomery, Hugh Bigod, Hugh de Grentmesnil, and other Norman barons, to invite over Robert Curthose, his elder nephew, and to make him sovereign of England as well as of Normandy, on the specious pretences that the right of primogeniture should be respected, and that those who held estates both in Normandy and in England could not be safe unless both countries were ruled by the same sovereign. The confederates immediately took the field, expecting Robert to join them with a large army. Odo intrusted his strong castle of Rochester to the care of Eustace, Count of Boulogne, with a garrison of five hundred knights, and himself retired to Pevensey, to await the arrival of his nephew and to proclaim him king. But Rufus, having detached a body of troops to lay siege to Rochester, marched in person in pursuit of the Earl-Bishop, shut him up within the walls of a castle on the sea-shore, and, after a blockade of seven weeks, compelled him to surrender,—Robert, with his usual giddiness, having occupied himself with frivolous amusements, instead of hastening across the Channel to claim his birthright. By the terms of capitulation, life and liberty were granted to Odo, on condition that he should swear to deliver up the Castle of Rochester, and to abjure the realm of England for ever.

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He conspires against William Rufus.

His resources were not yet quite exhausted. Being conducted by a small escort to the fortress, he was admitted into the presence of Eustace, and ordered him to surrender it, but made him a private signal that he wished to be disobeyed.

* H. Hunt. lib. vii. p. 212.

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The shrewd governor upbraided him as a traitor to the cause, and made prisoners both him and his guard. Rufus was excited to the highest indignation by the success of this artifice, and pressed the siege with the utmost rigour, being supported by a band of natives, who on this occasion rallied round him to be revenged for the oppressions they had suffered from the Grand Justiciar. However, the place was as obstinately defended by Odo, till the ravages of a pestilential disease compelled him to propose a surrender on honourable conditions. With considerable difficulty he obtained a promise that the lives of the garrison should be spared; but the demand that they should all depart with the honours of war, and that, as he himself withdrew, the besiegers, out of respect to his sacred character, should abstain from every demonstration of triumph, was contemptuously rejected. Accordingly, his men were all obliged to lay down their arms, and when he himself appeared, although clad only in canonicals, the trumpets being ordered to sound a flourish, as he passed through the ranks the English shouted "halter and gallows" in his ears. Knowing that, by the immunities of churchmen, his life was safe, he muttered threats and defiance; but he was immediately put on board a ship for Normandy, with a solemn admonition that, if he ever again set foot on English ground, nothing should save him from an ignominious death.*

He is banished from England.

It was charitably hoped that, renouncing the pomps of this world, he would pass the remainder of his days in superintending his diocese, which he had long grievously neglected, and in seeking to make atonement by penance for the irregularities of his civil and his military career; but, after spending a short time at Bayeux, he could endure a life of

* Chron. Sax. 195. Order. Vit. 668. Sim. 215. In Halstead's "Kent" there is a drawing of his seal, on one side of which he appears as an Earl, mounted on his war horse, clad in armour, and holding a sword in his right hand; but on the reverse he appears in his character of a Bishop, dressed in his pontifical habit and pronouncing the benediction. In the former capacity he left a natural son, who afterwards gained great renown in the court of Henry I. In the latter he was celebrated for his munificence to the see of Bayeux, which he filled about fifty years, rebuilding from the ground the church of Our Lady of Bayeux, furnishing it with costly vestments and ornaments of gold and silver, and endowing a chantry for twelve monks to pray for his soul, "bestowing his wealth, however indirectly gotten, on the church and poor."

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tranquillity no longer, and, as he was debarred from revisiting England, he wandered about from country to country on the Continent in quest of adventures, and at last died in a state of great destitution at Palermo.

His death. A.D. 1096.

One original historian, in drawing his character, says (I am afraid with too much justice), that "instead of attending to the duties of his station he made riches and power the principal objects of his pursuit;" * while another, who had probably shared in his bounty, declares that "he was a prelate of such rare and noble qualities, that the English, barbarians as they were, could not but love and fear him." †

There were several other Chief Justiciars in the reign of William the Conqueror, but none of their proceedings connected with the administration of the law are handed down to us, excepting the famous trial on Penenden Heath between Odo and Lanfranc;—and a very short notice of them will be sufficient.

William Fitz-Osborne, for a short time associated in the office, was related to the Dukes of Normandy both by father and mother, and he had been brought up with the CONQUEROR from infancy. Under his advice William acted in all the negotiations with Edward the Confessor and Harold respecting the succession to the crown of England, and preparations were at last made to seize it by force of arms. To the praise of consummate wisdom in the cabinet he added that of unsurpassed courage in the field, and he acted a conspicuous part in the decisive battle of Hastings, insomuch that he was proclaimed to be "the pride of the Normans and the scourge of the English." ‡ The earldom of Hereford was conferred upon him, with large possessions in the marches of Wales. During the time when he was Chief Justiciar, "Edric the Wild," whose possessions lay in that country, in conjunction with several other Anglo-Saxon Thanes, and backed by the Princes of Wales, set his authority at defiance, and continued, after various repulses, to make

William Fitz-Osborne Chief Justiciar. A.D. 1066.

* Order. Vit. 255. † Pict. 153.

‡ Pict. 151. Order. Vit. 203. Spelman says, "Acerrimus autem Anglorum hostis fuit, et qui Normanniæ Ducem præ aliis omnibus, ad invasionem Angliæ excitavit, funestoque illo Hastingense prælio tertiam aciem duxit."—*Gloss.* p. 336.

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head against him till William returned from Normandy, and effectually put down the insurrections which had taken place, in his absence, in this and other parts of the kingdom. Notwithstanding their general good understanding, differences would occasionally arise between the Conqueror and this favoured captain. It is related that, on one occasion, Fitz-Osborne, being steward of the household, or "Dapifer," had set upon the royal table the flesh of a crane scarcely half roasted, when the King, who in old age was much of a gourmand, and particularly prized crane when well cooked, in his anger aimed a blow at him; this was warded off by Eudo, another favourite, but it so enraged Fitz-Osborne that he instantly threw up his office. He was succeeded by Eudo, who is thenceforth designated by chroniclers as "Eudo Dapifer." Fitz-Osborne, having been restored to the favour of his sovereign, and created Lord of the Isle of Wight, died in the year 1072.*

Geoffrey, Bishop of Coutance, appointed Chief Justiciar for a special occasion †, was one of the fighting prelates who accompanied William, with the sanction of the Pope, in his memorable expedition; but having given judgment against Odo, he incurred the displeasure of this powerful favourite, and his preferment in England was stopped.

William de Warrenne and Richard de Benefacta Chief Justiciars.

On Odo's disgrace, William de Warrenne and Richard de Benefacta were jointly appointed to the office of Chief Justiciar. The former, a countryman and companion of the Conqueror, is chiefly noticed as being the ancestor of the celebrated William de Warrenne who gained such renown by his actions in the reigns of Henry III. and Edward I.; and is still more celebrated for his answer, on being required to show his title to his estate,—when, drawing his sword, he exclaimed, "William the Bastard did not conquer the kingdom for himself alone; my ancestor was a joint adventurer in the enterprise; what he gained by the sword, by the sword I will maintain." ‡

* Order. Vit. 218. Mad. Ex. i. 31—40. Will. Malm. 396—431.

† "Goisfridus Constanciensis Episcopus, in loco Regis fuit, et Justiciam tenuit in illo notabili placitó apud Pinendene, inter *Lanfrancum* Archiopiscopum Cantuar, et *Odonem* Comitem Cantii."— *Textus Ruff.* f. 50.

‡ The first William de Warrene died 1089, and was buried in the chapter-

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How Richard de Benefacta came by this surname has puzzled antiquaries. He was originally called Richard Fitz-Gislebert, or Fitz-Gilbert, being the son of Gislebert, or Gilbert, Count of Brion in Normandy. He gained distinction at Hastings, and as a reward for his bravery he received 8 lordships in Surrey, 35 in Essex, 3 in Cambridgeshire, 2 in Kent, 1 in Middlesex, 1 in Wiltshire, and 95 in Suffolk, besides all the burgages in the town of Ipswich. He took an active part in the great survey recorded in Domesday; in which, as may be supposed, his name very frequently appears. His descendants enjoyed much distinction during the reigns of all the Norman kings.

These two Grand Justiciars, during their joint administration, invented a new punishment, to be inflicted on disturbers of the public peace. Having encountered and defeated a powerful band of insurgents at a place called Fagadune, they cut off the right foot of all they took alive, including the ringleaders, the Earls of Norfolk and Hereford. It seems then to have been considered that in times of rebellion the Judges were to exercise martial law, or to disregard all law, according to their own arbitrary will.

William de Carilefo Chief Justiciar.

There is only one other Chief Justiciar recorded as having served under the Conqueror; William de Carilefo, or Kari-

house of a monastery he had founded at Lewes for monks of the Cluniac order. The following epitaph was engraved on his tomb: —

"Hic Guilelmus Comes, locus est laudis tibi fomes,
Hujus fundator, et largus sedis amator.
Iste tuum funus decorat, placuit quia munus
Pauperibus Christi, quod promptâ mente dedisti.
Ille tuos cineres servat Pancratius hæres,
Sanctorum castris, qui te sociabit in astris.
Optime Pancrati, fer opem te glorificanti;
Daque poli sedem, talem tibi qui dedit ædem."

It is reported that "this Earl William did violently detain certain lands from the monks at Ely, for which being often admonished by the abbot, and not making restitution, he died miserably; and, though his death happened very far from the Isle of Ely, the same night he died, the abbot, lying quietly in his bed and meditating on heavenly things, heard the soul of the Earl, in its carriage away by the devil, cry out loudly, and with a known and distinct voice, 'Lord have mercy on me! Lord have mercy on me!' And, moreover, that the next day the abbot acquainted all the monks in chapter therewith; and likewise that, about four days after, there came a messenger to them from the wife of this Earl, with one hundred shillings for the good of his soul, who told them that he died the very hour the abbot heard that outcry; but that neither the abbot nor any of the monks would receive it, not thinking it safe for them to take the money of a damned person." — See Dugdale's "Baronage," p. 73, 74.

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legho, who was a pious priest, and fought only with spiritual weapons. He was Abbot of St. Vincent's in Normandy, and without having been in the host which invaded England, or ever having put on a hauberk (strange to say!), from the mere reputation of his sanctity he was nominated to the bishopric of Durham. He was consecrated at Gloucester by the Archbishop of Canterbury, in the presence of the King and the assembled prelates of the realm. Simeon, having described this ceremony, adds, "Erat acerrimus ingenio, subtilis consilio, magnæ eloquentiæ simul et sapientiæ." He is much celebrated for the purity and impartiality with which he administered justice when placed at the head of the AULA REGIA; as well as the vigour which he displayed in asserting the privileges of his see against the
A.D. 1087. King. In the succeeding reign he was Chief Justiciar a second time after the fall of Odo; but soon quarrelled with Rufus, who was a notorious spoliator of Church property, and he was obliged to fly into Normandy, the temporalities of his see being seised into the King's hands. However, when Rufus made a northern progress to receive the homage of Malcolm, King of Scotland, and perceived the veneration with which the exiled Bishop was regarded, he had the generosity to recall him to his see, and made restitution of the lands of which he had deprived it. The prelate employed the ample revenues thus restored to him in the munificent work of erecting a new and splendid cathedral at Durham, on a plan which he had brought with him from France. He also presented to the Church a large store of books and ornaments collected by him during his banishment. Again falling under the King's displeasure, and being obliged to obey a mandate to travel towards Windsor under the pressure of severe illness, he expired soon after his arrival there, on the morrow of the Epiphany, in the year 1095. Such was his modesty, that he declined in his last moments the honour of burial in his cathedral, near the holy relics of St. Cuthbert; and he was, by his own desire, interred on the north side of the chapter-house. But he himself was regarded as a Saint; miracles were worked at his shrine; and this continued the cherished place of sepulture of succeeding

bishops. The monkish historians of Durham, in addition to encomiums on his piety, his liberality, his zeal for the rights of the Church, his genius, and his learning, praise him loudly for the simplicity of his manners, and the temperance of his life.*

Flambard Chief Justiciar.

Rufus's only other Chief Justiciar, in all respects a contrast to his predecessor, was Ralph Flambard, the "devouring Torch," who for some time held the Great Seal, and whom I have consequently described in my LIVES OF THE CHANCELLORS. To this work I must refer such of my readers as would become acquainted with his revolting atrocities and his edifying penitence.

First sittings in Westminster Hall.

I may add, that while he was Chief Justiciar the sittings of the Curia Regis were first held in Westminster Hall. The Saxon Kings had founded a monastery on a piece of ground then surrounded by the Thames, and called "Thorney Island." In relation to its direction from the City of London, the metropolis of the kingdom, the new foundation received the name of "West-minster;" and here a royal palace was erected, which was enlarged and beautified by Edward the Confessor, but was still mean, compared with the stately structures erected by the Normans at Rouen. The Conqueror, although he observed that it contained no hall in which the great council of the nation could assemble, or in which justice could conveniently be administered, had been too much occupied with graver matters to supply the defect; but William Rufus built, adjoining to the palace at Westminster, the magnificent hall which is looked upon with such veneration by English lawyers, and which is the scene of so many memorable events in English history. This being completed at Whitsuntide, 1099, the Chief Justiciar, Flambard, sat here in the following Trinity Term; and the superior courts of justice have been held in it for 750 years. The concentration thus established has perhaps contributed to the ascendency which English law and English lawyers have so long enjoyed.†

* Godwin de Præs. 731. Roger de Wendover, xi. 32. Will. Malm. 486.

† Independently of the *prestige* attaching us to Westminster Hall, I would caution my brethren against the desire, from some partial convenience, to disperse themselves in separate bodies over different regions of the metropolis.

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A. D. 1100.

It might have been expected that Henry I., who at the commencement of his reign wished to make himself popular by restoring Saxon institutions, would have abolished or reformed the office of Chief Justiciar, of which such heavy complaints had been made by the natives; but he allowed it to remain in full vigour, and he soon appointed to it the famous Roger, Bishop of Salisbury, who rendered it more odious than it had ever been before. The extraordinary vicissitudes of his career, from his reading mass as a village curate in Normandy till he was obliged to surrender his castle of Devizes to King Stephen, and died miserably, I have already recorded.*

Roger, Bishop of Salisbury, Chief Justiciar.

Ralph Basset Chief Justiciar.

The only other Chief Justiciar of much note during this reign was Ralph Basset, son of one of the companions of the Conqueror, and the founder of a family in England of great distinction for many generations.† Of his judicial exploits there is no record, except at a grand assize which, during the King's absence in Normandy, he held at Huncote in Leicestershire. Here he convicted capitally, and executed, no fewer than four score and four thieves, and deprived six others of their eyes and their virility; drawing upon himself the imputation of cruelty, and not escaping the suspicion that he was influenced by a desire to enrich himself from the forfeitures which were incurred.‡ He held the office for a long period, and was much more praised for the vigour than the clemency or justice with which he exercised its functions.§

A. D. 1135—1154.

The Chief Justiciars of King Stephen were not men of

* Lives of Chancellors, vol. i. ch. xi.

† Now represented by the Baroness Basset.

‡ A. D. 1124. "Toto hoc anno fuit Rex Henricus in Normanniâ. Hoc ipso anno, post S. Andreæ festum tenuit Radulfus Basset et Regis Theini Procerum Concilium in Lethecæstrescire apud Hunde-hoge, et suspenderunt ibi tot fures quot antea nunquam; scilicet in parvo temporis spatio, omnino quatuor et quadraginta viros. Sex item viros privarunt oculis et testiculis." The writer goes on pathetically to describe the oppressed condition of his countrymen under the Chief Justiciar. "Admodum gravis fuit his annus. Qui quicquam honorum habebat, iis privatus erat per magna vectigalia, et per iniqua decreta; qui nihil habebat periit fame."—*Chron. Sax. ad ann.* 1124.

§ He was succeeded by his son Richard Basset, of whom I do not find any more precise notice than by Ordericus Vitalis, who says, "Ricardus Basset, cujus in Anglia, vivente Henrico Rege, potentia, utpote Capitalis Justitiarii, magna fuit."— *Ord. Vit. ad ann.* 1136.

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much renown *— till the last,— who was no other than Prince Henry, afterwards his successor, and so famous under the name of Henry II. After the long struggle for the crown of England between the daughter of Henry I. and him who pretended to be the heir male of the Conqueror, it was at last settled that he should reign during his life, and that her son by Geoffrey Plantagenet should be immediately appointed Chief Justiciar, and should mount the throne on Stephen's death.† I shall not attempt to rival Lord Lyttleton by attempting a history of this Chief Justiciar from his cradle to his grave. I must content myself with saying that he held the office above a year. During the first six months he actually presided in the AULA REGIS, and, with the assistance of the Chancellor and the other great officers of state, decided the causes civil and criminal which came before this high tribunal. He then paid a visit to the continental dominions which he held in his own right and in right of Eleanor his wife, extending from Picardy to the mountains of Navarre. Sojourning in Normandy when he heard of the death of Stephen, he was impatient to take possession of the crown which had been secured to him by the late treaty. A long continuance of stormy weather confined him a prisoner in the haven of Barfleur, but at last he reached Southampton, and, being crowned King of England, the first act of his reign was to appoint a new Chief Justiciar.

A.D. 1153. Prince Henry (afterwards Henry II.) Chief Justiciar.

A.D. 1154.

The object of his choice was Richard de Luci, a powerful baron of a distinguished Norman family, who was expected to govern the realm with absolute sway in Henry's name. Although he long nominally retained his office, it was soon stript of all its power and splendour. The Lord Chancellor had hitherto been a subordinate officer, but the towering ambition and lofty genius of Thomas à Becket, almost from the moment when he received the Great Seal, reduced all the other ministers of the crown to insignificance, and, till the time when, becoming Archbishop of Canterbury, he

Richard de Luci Chief Justiciar.

* Geoffrey Ridel, Geoffrey de Clinton, and Alberic de Vere.

† "Anno Gratiæ 1153, qui est annus 18 regni Regis Stephani, pax Angliæ reddita est, pacificatis ad invicem Rege Stephano et Henrico Duce Normanniæ. Rex vero constituit Ducem Justiciarium Angliæ sub ipso, et omnia negotia per eum terminabantur. Et ab illo tempore Rex et Dux unanimes erant in regimine Regni." — *Hoveden*, vol. i. p. 490. n. 40.

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quarrelled with his benefactor, all the power of the state was concentrated in his hands. Encroaching on the functions of the Chief Justiciar, he not only ruled all questions that came before the AULA REGIS, although only sixth in point of rank of those who sat as judges there*, but the domestic government of the country and foreign negotiations were exclusively intrusted to him, and when war broke out he commanded the royal army in the field.

A.D. 1162.

After the King's quarrel with the Archbishop, the importance of De Luci was very much enhanced, and we not only find judicial proceedings recorded as having taken place, "Coram Ricardo de Luci et aliis Baronibus apud Westmonasterium," but we learn that he went about administering justice all over the kingdom, and that he quelled a dangerous insurrection in London. To him we are chiefly indebted for the CONSTITUTIONS OF CLARENDON, by which a noble effort was made to shake off the tyranny of Rome, and which were adopted as the basis of our ecclesiastical polity at the Reformation. † He was excommunicated for the part he had taken in this heretical production, but afterwards made his peace with the Church. At last he was overwhelmed by the terrors of superstition, and, abandoning worldly cares and grandeur, he laid down his office, became a monk, and died wearing the cowl in a monastery which he had founded. ‡

Robert Earl of Leicester Chief Justiciar.

His successor was Robert, Earl of Leicester. Although inferior men now held the Great Seal, the office of Chief Justiciar did not recover its splendour till near the end of this reign, when it was filled by one of the greatest men who have appeared in English history. We are informed of only one judgment of the King's Court while the Earl of Leicester presided there, and this was upon the ex-Chancellor, Thomas à Becket, who was first amerced in 500*l.*, and, proving contumacious, was ordered to be imprisoned. §

* "He came after the Justiciar, the Constable, the Mareschall, the Seneschall, and the Chamberlain." — *Madd. Exch.* c. ii.

† Madd. Exch. i. 146—701.

‡ "Ric. de Luci Justiciarius Angliæ, relictâ Justiciariâ potestate, factus est Canonicus regularis in Abbatiâ de Lesnes quam ipse in fundo suo fecerat." — *R. Hoveden*, f. 337. *a.*

§ Hoved. vol. ii. 494. n. 1. 10. 20.; 495. n. 10.

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I will therefore pass on to RANULFUS DE GLANVILLE, equally distinguished as a lawyer, a statesman, and a soldier.

Ranulfus de Glanville. His birth.

He was born in the end of the reign of Henry I., at Stratford, in the county of Suffolk; his family was noble, but I do not find any particulars of his progenitors.* He afforded a rare instance in those days of a layman being trained as a good classical scholar, and being initiated in all the mysteries of the feudal law. At the same time he was a perfect knight, being not only familiar with all martial exercises, but having studied the art of manœuvring large bodies of men in the field, according to the most scientific rules then known. He attached himself to several Chief Justiciars †, sometimes assisting them in despatching business in the AULA REGIS, and sometimes accompanying them in their campaigns.

He inherited a considerable estate from his father, and he obtained large possessions in right of his wife Berta, daughter and heiress of Theobald de Valeyinz, Lord of Parham. Part of these were situate in the county of York, where he seems to have established his principal residence. Under King Stephen he was receiver for the forfeited Earldom of Conan, and collector of the rents of the Crown in Yorkshire and Westmoreland. ‡

He is sheriff of Yorkshire. A. D. 1174.

During the year 1174, the 20th of Henry II., he was High Sheriff of Yorkshire, and in this capacity he conferred greater glory on his country than any Englishman, before or since, holding merely a civil office. Henry II. being hard pressed in his continental dominions by the unnatural alliance between his rebellious sons and Louis VII., the Scots under their King, William the Lion, invaded England, and committed cruel ravages in the northern counties. Being stopped on the banks of the Tyne by the obstinate defence of the Castle of Prudhoe, Geoffrey, Bishop of Lincoln, the King's son by the Fair Rosamond, collected a large army to encounter them. At his approach they retreated to the north,

* "Ranulph de Glanvilla fuit vir præclarissimus genere, utpote de nobili sanguine." — See Preface to Lord Coke's 8th Rep. xxi.

† From his knowledge of practice, and all the forms of procedure, there seems reason to think that he must some time have acted as prothonotary or clerk of the court, although never in orders.

‡ Madd. Exch. i. 297. (*g*), 430. (*b*), 328. (*p*); ii. 183. (*y*), 200. (*y*).

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A.D 1174.

and he, thinking that they had recrossed the Tweed, marched back to his see, singing TE DEUM, and celebrating very boastfully the supposed success which he had gained. The King of Scots, however, took several strong castles in Northumberland, which had at first withstood his assault, and laid siege to Alnwick with his regular forces, sending skirmishing parties even beyond the Tyne and the Tees to collect provisions and levy contributions. One of these, commanded by Duncan, Earl of Fife, surprised the town of Warkworth, which they burned to the ground, massacring all the inhabitants without distinction of age or sex, and not sparing even those who had taken sanctuary in the churches and convents.

He takes William the Lion, King of Scots, prisoner.

Ranulfus de Glanville, the sheriff of Yorkshire, hearing of these excesses, without waiting for orders from the government, issued a proclamation for raising the *posse comitatus*, and all classes of the inhabitants flocked eagerly to his standard. With a body of horse, in which were about four hundred knights, after a hard day's march, he arrived at Newcastle. There he was told that William the Lion, instead of repressing, encouraged the devastation committed by the marauders, and, believing that there was no longer any army to face him, entirely neglected all the usual precautions of military discipline. The gallant sheriff resolved to push forward next morning, in the hope of relieving Alnwick and surprising the besiegers. The English accordingly began their march at break of day, and, though loaded with heavy armour, in five hours had proceeded nearly thirty miles from Newcastle. As they were then traversing a wild heath among the Cheviot Hills they were enveloped in a thick fog, and the advice was given that they should try to find their way back to Newcastle; but Glanville, rather than stain his character with the infamy of such a flight, resolved to proceed at all hazards, and his men gallantly followed him. They proceeded some miles in darkness, being guided by a mountain stream, which they thought must conduct them to the level country. Suddenly the mist dispersed, and they saw before them in near view the castle of Alnwick beleaguered by straggling bands of Scots, and the Scottish King amidst a small troop of horsemen diverting himself

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with the exercises of chivalry, free from any apprehensions of danger. William at first mistook the English for a party of his own countrymen returning loaded with the spoils of a *foray*. Perceiving his error, he was undismayed, and, calling out "Noo it will be seen whilk be true *knichts*,"* he instantly charged the enemy. In a few minutes he was overpowered, unhorsed, and made prisoner. Some of his nobles coming to the rescue, and finding their efforts ineffectual, voluntarily threw themselves into the hands of the English, that they might be partakers in the calamity of their sovereign. Glanville, prudently considering that he might be endangered by the reassembling of the scattered bands of the Scots, immediately set off with his prisoners for Newcastle, and arrived there the same evening. Thus did the valiant civilian in one day, after the fatigue of a long march, ride at the head of a band of heavy armed horse above seventy miles, charge a national army, and make captive a King who had threatened to carry war and desolation into the very heart of England. Having secured his royal prize in the strong castle of Richmond, he sent off a messenger to London to announce his victory.

How the news was received by Henry II.

It so happened that, the same hour at which William was taken at Alnwick, Henry had been doing penance at the tomb of St. Thomas of Canterbury.† Alarmed by the dangers which surrounded him from domestic and foreign enemies, and dreading that he had offended Heaven by the rash words he had spoken which led to the martyrdom of the Archbishop, he had thought it necessary to visit the shrine of the new saint. At the distance of three miles, discovering the towers of Canterbury Cathedral, he alighted from his horse, and walked thither barefoot, over a road covered with rough and sharp stones, which so wounded his feet that in many places they were stained with his blood.

* These words he must have spoken that they might be understood by his Lowland common soldiers. Addressing the knights themselves, he would have spoken in French, which was then the language of the higher orders in Scotland as well as in England.

† All Europe was now ringing with the fame of his miracles, and, by a papal bull issued the year before, he had been declared a Saint and a Martyr, an anniversary festival being appointed on the day of his death "in order that, being continually applied to by the prayers of the faithful, he should intercede with God for the clergy and people of England."

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A.D. 1174.

His bare back was then scourged at his own request by all the monks of the convent, and he continued a whole day and night before the tomb, kneeling or lying prostrate on the hard pavement, employed in prayer, and without tasting nourishment. He then journeyed on to Westminster; and he was lying in bed, very sick from the penance he had undergone, when, in the dead of night, a messenger, stained with the soil of many counties, arrived at the palace, and, declaring that he was the bearer of important despatches, swore that he must see the King. The warder at the gate and the page at the door of the bedchamber in vain opposed his entrance, and, bursting in, he announced himself as the servant of Ranulfus de Glanville. The question being asked, "Is all well with your master?" he answered, "All is well, and he has now in his custody your enemy the King of Scots." "Repeat those words," cried Henry, in a transport of joy. The messenger repeated them, and delivered his despatches. Henry, having read them, was eager to communicate the glad tidings to his courtiers, and, expressing gratitude to Ranulfus de Glanville, piously remarked that "the glorious event was to be ascribed to a higher power, for it had happened while he was recumbent at the shrine of St. Thomas."*

Glanville was ordered forthwith to appear with his prisoner, and to carry him to Falaise in Normandy. Here William the Lion was kept in strict confinement, till the negotiation was concluded by which he was ungenerously compelled to acknowledge himself the liegeman of the King of England.

The sheriff was immediately promoted to be one of the Justiciars appointed to assist the great officers in the AULA REGIS, and to go *iters* or circuits for administering justice periodically in different parts of England.† In this new capacity he showed as much zeal as when leader of a military

* Newb. ii. 36. Gervase, 1427. Dalrymp. Annals, i. 129. R. Hoved. 529.

† There seems reason to think that he was one of a court appointed to receive petitions in the first instance, and to report upon them to the Aula Regis. After the mention of his name with five others, there is the following observation in Maddox: — "Isti sex sunt Justitiæ in curia regis constituti ad audiendum clamores populi."

band, and the only fault imputed to him was that he sometimes displayed "a vigour beyond the law." These stretches of authority, however, were justified or palliated by the turbulence of the times. He now possessed the entire confidence of the King, and he gradually acquired more influence than any other minister.

One task of peculiar delicacy was committed to him. Henry, although he owed so much to his wife, proved to her the worst of husbands; and he not only entertained the Fair Rosamond and other mistresses, but he actually shut up Eleanor as a prisoner in the castle of Winchester. The government of this fortress, with the care of the royal captive, was now assigned to Glanville, and was continued to him till the death of Henry, after a lapse of sixteen years. He had contrived, however, to give satisfaction to both parties, for the King praised him for his watchfulness and the Queen for his kindness.*

A.D. 1180. Glanville made Chief Justiciar.

As a reward for all these services, Glanville at last gained the object of his ambition, and was installed in the office of Chief Justiciar. It had been some time in commission, the commissioners being the Bishops of Winchester, Norwich, and Ely; but as soon as the Pope heard of their appointment he wrote to say that "it was the duty of pastors to feed their flocks, not to act the part of secular magistrates," and he recalled them from the courts in which they presided to the care of the dioceses to which they had been consecrated. On their resignation, Ranulfus de Glanville, with universal applause, was appointed to the office with sole and undivided sway.† He is the first who filled it who is celebrated for learning, impartiality, and other qualities purely judicial. Under him the AULA REGIS deserved the praise bestowed upon it by Peter de Blois in a letter to the King: — "If causes," said he, "are tried in the presence of your Highness or your Chief Justiciar, then neither gifts nor partiality are admitted; there all things proceed according to the rules of judgment and justice; nor does ever the sentence or decree

* See the authorities collected by Miss Strickland in her excellent Life of Queen Eleanor.

† Dicето, 606. R. Hoved. 337.

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transgress the limits of equity. But the great men of your kingdom, though full of enmity against each other, unite to prevent the complaints of the people against the exactions of sheriffs, or other officers in any inferior jurisdictions, whom they have recommended and patronise, from coming to your royal ears. The combination of these magnates can only be truly compared to the conjunction of scales on the back of the Behemoth of the Scriptures, which fold over each other, and form by their closeness an impenetrable defence." *

A.D. 1184.

Yet my Lord Chief Justiciar Glanville himself did not escape calumny. The story was circulated against him, and is recorded by a contemporary historian, that, to get possession of the wife of Gilbert de Plumpton, he brought a false charge of rape against that potent Baron before the AULA REGIS, sitting at Worcester, and sentenced him to be hanged; but that the King, taking pity upon the prisoner, and knowing the motive for the prosecution, spared his life, and commuted the sentence to perpetual imprisonment. † This is probably a scandalous perversion of the truth by an enemy; for we have every reason to believe that the Chief Justiciar was a man of pure morals and honourable principles; and it is incredible that Henry, who was renowned for his love of justice, should have continued to employ, in a post of high power and trust, one whom he had detected in attempting such an enormity. We need not doubt that the punishment was mitigated on account of some extenuating circumstances,—which might have been brought to the King's notice by the Judge himself.

Glanville as a law writer.

Glanville continued to fill the office of Chief Justiciar for five years longer; and his judicial reputation still went on increasing. He now composed and published in Latin, "A Treatise on the Laws and Customs of the Kingdom of

* Epistle 95. ad Hen. Regem.

† A. D. 1184. "Eodem anno cum Gilbertus de Plumtun Miles nobili prosapia ortus ductus esset in vinculis usque Wigorniam, et accusatus esset de raptu coram Domino Rege a Ranulfo de Glanvilla Justiciario Angliæ, qui eum condemnare volebat, injusto judicio judicatus est suspendi in patibulo. Rex pietate commotus præcepit custoditum manere; sciebat enim quod per invidiam fecerat hæc illi Ranulfus de Glanvilla, qui eum morti tradere volebat propter uxorem suam. Sic itaque Miles ille a morte liberatus usque ad obitum Regis fuit incarceratus." — *R. Hoved.* vol. ii. p. 622, 623.

England," which on some points is still of authority, and which may be perused with advantage by all who take an interest in our legal antiquities. This author is to be considered the father of English jurisprudence. Bracton, who wrote in the following century, is more methodical and elegant, but he draws largely from the Roman civil law, and is sometimes rather speculative; while Glanville actually details to us the practice of the AULA REGIS, in which he presided, — furnishes us with a copious supply of precedents of writs * and other procedure then in use,—and explains with much precision the distinctions and subtleties of the system which, in the fifth Norman reign, had nearly superseded the simple juridical institutions of our Anglo-Saxon ancestors. The general reader may be amused by a translation of his PREFACE: —

Preface to Glanville's book.

"The Majesty of the King should not merely be supported with arms to restrain rebels and to repel foreign invaders, but ought likewise to be adorned with laws for the peaceful government of the people.† May our most illustrious Sovereign conduct himself with such felicity both in peace and in war,—by the force of his right hand crushing the insolence of the proud and the violent, and with the sceptre of equity moderating his justice to the humble and obedient,—so that, as he may be always victorious over his enemies, so he may on all occasions show himself impartially just in the government of his subjects!

"How vigorously, how skilfully, how gracefully our most excellent King has conducted his arms and baffled his foes is manifest to all, since his fame has now spread over the whole world, and his splendid actions have reached even the extremities of the globe. How justly, how discreetly, and how mercifully he who loves peace, and is the author of it, has conducted himself towards his subjects is evident, since the Court of his Highness is regulated with so strict a regard to equity, that none of the judges have so hardened a front or so rash a presumption as to dare to deviate, however slightly, from the path of justice, or to utter a sentence in any measure contrary to truth.‡ Here, indeed, no

* It is curious to observe that his "Precipe quod reddat" and various other writs are precisely the same as those used in the reign of William IV. when real actions were abolished.

† This commencement is imitated by Bracton, Fleta, and the Scottish "REGIAM MAGISTRATUM."

‡ The writer seems not to have suspected the scandalous tales spread abroad respecting himself and Sir Gilbert and Lady Plumpton.

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A.D. 1188.

poor man is oppressed by the power of his adversary, and the balance of justice is not swayed by love or by hatred. Every decision is governed by the laws of the realm, and by those customs which, founded on reason in their origin, have for a long time been established. What is still more laudable, our King disdains not to avail himself of the advice of such men (although his subjects) who, in gravity of manners, in familiarity with the laws and customs of the realm, in wisdom and in eloquence, are known to surpass others, and whom he has found by experience to use most despatch (as far as is consistent with reason) in the administration of justice, by deciding difficult questions and ending suits; acting now with more severity, now with more lenity, as they see most expedient.*

"The English laws, although not written, may, without impropriety, be termed *laws*. Indeed, we adopt the maxim, 'That which pleases the prince has the force of law.'† But I refer more particularly to those laws which evidently were promulgated by the advice of the nobles and the authority of the prince. If from the mere want of writing only they should not be considered as *laws*, then, indeed, writing would seem to confer more authority upon laws than either the authority of those framing them, or the equitable principles on which they are framed.

"To reduce in every instance the laws and constitution of this realm into writing would in our times be absolutely impossible, as well on account of the ignorance of writers as of the confused multiplicity of enactments. But there are some well established rules, which, as they more frequently arise in court, it appears to me not presumptuous to put into writing, to assist the memory and for general reference. A certain portion of these I mean to submit to the reader in the following work, purposely making use of a familiar style, and of words which occur in legal proceedings. My object has been to instruct not only the professional lawyer, but such as are less accustomed to technical learning. For the sake of perspicuity I have divided the present work into BOOKS and CHAPTERS." ‡

* This is said to afford proof that our system of equitable jurisprudence is to be traced to the Aula Regis.

† Justin. Inst. li. t. 2. s. 6.

‡ Lord Coke says, "Ranulphus de Glanvilla, in the reign of King Henry II., learnedly and profoundly wrote of part of the laws of England (whose works remain extant at this day); and in the Preface he writeth that the King did govern this realm by the laws of this kingdom, and by customs founded upon reason and of ancient time obtained. By which words, spoken so many hundred years since, it appeareth that then there were laws and customs of this kingdom, grounded upon reason and of ancient time obtained, which he neither

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As a specimen I may give the proceedings in a suit for land, — leading either to "Trial by Battle," or "the Grand Assize:"

A.D. 1188. Mode of trial by Grand Assize or by Battle.

"After three reasonable essoins, which accompany the view of the land, both parties being again present in court, the demandant shall claim in this manner:—'I demand against this H. half a knight's fee, or two ploughlands, in such a vill, as my right and inheritance, of which my father was seised in his demesne as of fee, in the time of King Henry I., and from which he took the profits to the value of 5*s.* at least, in corn, hay, and other produce; and this I am ready to prove by my freeman, I., to whom his father, when on his death-bed, enjoined, by the faith which a son owes to his father, that if he ever heard a claim concerning that land, he should prove this as that which his father saw and heard.'

"The demand being thus made, it shall be at the election of the tenant either to defend himself by the Duel, or to put himself upon the King's Grand Assize, and require a recognition 'which of the two has the greater right to the land in dispute?' But here we would observe, that after the tenant has once waged the Duel, he must abide by his choice, and cannot afterwards put himself upon the Assize.

"In the Duel, the tenant may defend himself either in his own person if he choose so to do, or by any other unobjectionable witness as his champion. But it frequently happens that a hired champion is produced in court, who, for reward, has undertaken the proof. If the adverse party should except to such a champion, alleging him to be an improper witness, from having accepted a reward, and that he is ready to prove this accusation against the champion, this matter shall be tried, and the principal duel shall be deferred. If upon this charge the champion or the demandant should be convicted and conquered in the duel, then his principal shall lose the suit, and the champion shall never from thenceforth be admitted in court as a witness for the purpose of making proof by duel for any other person. But, with respect to himself, he may be admitted either in defending his own body, or in prosecuting any atrocious personal injury, as being a violation of the King's peace; and he may also defend by duel his right to his own fee and inheritance."

The proceedings are described till at last we come to the writ of possession:—

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could nor would have affirmed if they had been so recently and almost presently before that time instituted by the Conqueror." — *Preface to 8th Rep.* xviii.

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"The King to the Sheriff of ——, greeting: I command you that without delay you give possession to M. of half a knight's fee in the vill of ——, in your bailiwick, concerning which there was a suit between him and H. in my court; because such land is adjudged to him in my court by the duel. Witness," &c.*

I add the mode of proceeding in cases of *treason*: —

"When any one is charged with the King's death, or with having raised a sedition in the realm or in the army, either a certain accuser appears, or not. If the public voice alone accuses him, he shall be required to give bail, or he shall be imprisoned. The truth of the charge shall then be inquired into in the presence of the Justices, who weigh each conjecture that makes for, or against, him. If on the trial by the ordeal a person is convicted of a capital crime the judgment is of life and members, which are at the King's mercy.

"Should, however, a certain accuser appear, and give security to prosecute his plea and propound his charge, — that he had seen, or by other evidence could prove in court, the accused guilty of having conspired against the King's life, or having raised a sedition in the realm or in the army, and the accused on the other hand deny every thing the other had asserted, it is usual to decide the plea by the Duel. And here it should be observed, that from the moment the duel is waged neither party can add or diminish any thing from the words employed in waging the duel, or in any other measure decline or recede from his undertaking, without being held as conquered, and liable to the penal consequences of defeat. Nor can the parties be afterwards reconciled to each other by any other mode than the King's licence or that of his justices."†

It is said that Glanville drew up this compendium of the laws of England for the public use by the command of Henry II.‡ It remained in MS. till the year 1554, when it was first printed at the instance of Sir William Stanford, a grave and learned judge of the Court of Common Pleas.§ Its merits have been very generally acknowledged. Dr. Robertson, in his observations upon the early part of the 12th century, says, "that in no country of Europe was there

* B. ii. ch. i—iv.

† Book xiv. c. 1. The most recent instance we have of a duel of this sort is that between Henry of Bolingbroke and Thomas Mowbray, Duke of Norfolk, which is very graphically described in the first act of Shakspeare's play of Richard II.

‡ Madd. Exch. 123.

§ 4 Inst. 345. n.

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at that time any collection of customs, nor had any attempt been made to render law fixed: the first undertaking of that kind was by Glanville, Lord Chief Justice of England, in his *Tractus de Legibus et Consuetudinibus*, composed about the year 1189.* Lord Coke thus assigns the reason for giving a valuable sketch of Glanville's life,—"in token of my thankfulness to that worthy Judge for the fruit which I confess myself to have reaped out of the fair fields of his labours. I will, for the honour of him, and of his name, and posterity which remain to this day, impart and publish, to all future and succeeding ages, what I have found of great antiquity and of undoubted verity." †

Some, I am well aware, have lately attempted to deprive Glanville of the honour of the authorship of the treatise which had so long passed under his name; but, in suggesting that it must have been written by an ecclesiastic employed by him, they appear to have little other reason beyond the assumed incompetency of one who was a layman and a warrior to write it; and they forget the manners of the age when they object to a grave and learned judge throwing off his robes and laying aside his pen, to put on a coat of mail and to grasp a spear.‡

* Charles V. vol. i. p. 296. The historian, however, seems to have overlooked the "Assizes of Jerusalem," composed in 1099; highly valued by Lord Loughborough and by Gibbon.

† "Ne reverendissimo illi judici videar ingratus pro fructu quem ex pulcherrimis ejus operum arvis me colegisse confiteor, in honorem ejus, et nominis, et nobilis hodie florentis, in secula futura emittere, et in medium proferri, visum est, quæ magnæ fore vetustatis et exploratæ veritatis sæpissime sum expertus." — *Preface to 8th Rep.* xviii.

Spelman says, "Hic cum ad suam usque ætatem (instar rhetrarum Lycurgi) ἄγραφος id est *non scripta* mansisset, maxima pars juris nostri; omnium primus ἔγγραφον reddere aggressus est, composito illius argumenti libro quodam, cui in antiquis MSS. iste titulus *Tractatus de legibus et consuetudinibus Regni Angliæ, tempore Regis Henrici II. compositus, justitiæ gubernacula tenente illustri viro Ranulpho de Glanvilla, Juris Regni et Antiquarum consuetudinum eo tempore peritissimo.*" — *Gloss.* p. 338.

‡ The objection hardly deserves notice, which arises from the title-page in the most ancient MS. copy of the work, saying, that it was written in the time of Henry II., "the illustrious Ranulph de Glanville, who, of all in those days, was the most skilled in the law and ancient customs of the realm; then holding the helm of justice." It is truly observed that he would not thus have praised himself, but the title-page is evidently the composition of a later age. Hoveden evidently considered Glanville the author of the book which goes by his name, and probably thought that the learning and ability which it displays contributed to his elevation,—thus narrating his appointment as Chief Justiciar: — "Henricus Rex Angliæ, pater, constituit Ranulphum de Glan-

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Glanville's conduct to the Welsh.

Glanville continued with energy to exercise the functions of his office in preserving the peace of the kingdom, as well as in presiding in the AULA REGIS. In the year 1181, the Welsh, during the King's absence in Normandy, having made an incursion into England, and killed Ranulfus de Poer, sheriff of Gloucestershire, the Chief Justiciar, as guardian of the realm, drew together an army, marched against the mountaineers, and drove them back to the woods

A.D. 1185. and fastnesses of their own country.* A partisan warfare was kept up between the two nations for some years, till at last Glanville was sent by Henry to treat with Rees ap Gryffith, and the other chiefs of South Wales, not only for the purpose of finishing the war, and bringing back those who were called rebels to their fealty, but likewise for retaining a body of their foot to serve in the English army against Philip, King of France. Glanville's mission was in all respects most successful. He perceived, as Lord Chatham did with respect to the Scotch Highlanders six centuries afterwards, that the best way of preventing them from annoying England was to employ them against foreigners, and that they would be faithful in proportion as they themselves were trusted. The Welsh very readily agreed to keep within their ancient boundaries, and to acknowledge Henry as their sovereign liege lord: they furnished a body of auxiliaries, who served with high reputation against his enemies on the Continent; and a basis of conciliation was established, which subsisted till Edward I. determined to crush the Princes of Wales, and to bring the whole principality under his own immediate rule. †

A.D. 1186. As an acknowledgment of Glanville's services, civil and military, there was now conferred upon him the additional dignity of Dapifer. ‡

The only other important affair, during the present reign, in which our Chief Justiciar is stated to have been concerned was a dispute between the King and the monks of

villa suum Justiciarium totius Angliæ, cujus sapientiâ conditæ sunt leges subscriptæ quas Anglicanas vocamus."

* Benedict. Abbas, ad ann. 1181.

† Benedict. Abbas, ad ann. 1185, 1186.

‡ Madd. Exch. i. 24.

Canterbury. As they collected immense riches from the miracles of St. Thomas, Henry had attempted to establish a rival foundation near this city; and, that they might preserve their monopoly, they prevailed on Pope Urban III. to send him an apostolical mandate, ordering him to put a stop to the building.

A.D. 1186. Glanville's prohibition in the suit between Henry II. and the monks of Canterbury.

Supported by the present Archbishop of Canterbury, much more obsequious than his sainted predecessor, he disregarded the mandate, and was more eager than ever to mortify the monks. His Holiness thereupon appointed the abbots of Battle, Feversham, and St. Augustine to enforce the execution of the mandate. They, holding an ecclesiastical court under the Pope's authority, were about to issue process against all connected with the new foundation, when Glanville, as Chief Justiciar, issued a writ of prohibition, which is still extant, in the following form: —

"R. de Glanville, &c., to the Abbot of Battle, greeting: I command you on behalf of our Lord the King, by the allegiance which you owe him, and by the oath which you have sworn to him, that you by no means proceed in a suit between the Monks of Canterbury and the Lord Archbishop of that See, until you shall have answer made to me thereupon; and, all delay and excuses being laid aside, that you appear before me in London, on Saturday next after the Feast of St. Margaret the Virgin, there to make answer in the premises. Witness," &c.*

The suit being spun out for some years, and Clement, a new Pope, vigorously taking up the cause of the monks, Glanville attempted to bring about an amicable settlement of the difference, and took a journey to Canterbury, that upon the spot he might negotiate with better effect. The subprior said that he and his brethren much desired the King's mercy, — *Glanville, C. J.* "You yourselves will have no mercy; but, from your attachment to the Court of Rome, refuse to submit to the advice of your sovereign or of any other person." — *Subprior.* "Saving the interests of our monastery, and the rights of the Church, we are ready to submit to the

* Appendix to Litt. Hist. II. II. vol. vi. 427. It is supposed that there was a similar writ to each of the two other legates, but this is the only one extant.

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King; but we are greatly deterred from implicitly trusting to the King, by reason that he has suffered us to remain during almost two years deprived of all our possessions, and in a measure imprisoned within our walls."—*Glanville, C. J.* "If you doubt the King, there are bishops and abbots of your order, and there are barons and churchmen belonging to the court, who, should you trust your cause to them, would certainly do you justice."— *Subprior.* "All these you mention are so partial on the side of the archbishop, so complaisant to the King, and so unfriendly to us, that we do not venture to confide in their arbitration."—*Glanville, C. J.* (hasting away with much indignation). "You monks turn your eyes to Rome alone; and Rome will one day destroy you!"—This controversy was at last compromised, and there was religious peace in the country during the remainder of the reign of Henry II.

A new Crusade. A.D. 1188.

The passions of men were now absorbed in the new Crusade. Europe had been thrown into a state of consternation and alarm by the intelligence that Saladin had taken Jerusalem, and that nearly all the conquests of the first crusaders had been recovered by the infidels. A parliament being held on the 30th of January, in the year 1189, the Archbishop of Canterbury, "by the authority of God, of the blessed apostles Peter and Paul, and of the Chief Pontiff, denounced excommunication against all persons who for seven years should begin or foment any war among Christians; and declared a plenary absolution from all sins to all persons, whether ecclesiastics or laymen, who should take the cross." The same day the Primate, and his vicar the Bishop of Rochester, preached before the King and Parliament *on the mystery of the Cross;* and, pointing out the sin and shame imputable to all who professed to be disciples of Jesus, from his sepulchre being left in the hands of believers in the false prophet Mahomet, exhorted men of all degrees, from the King on his throne to the meanest of his subjects, forthwith to join the gallant and pious bands who were marching for the East, and, by assisting in the great enterprise, to insure to themselves bright glory in this world, and eternal salvation in the

next. The King expressed his determination to march for Palestine as soon as the affairs of state in which he was engaged would permit. But what was the astonishment of all present, when the Chief Justiciar, Ranulfus de Glanville — known to be vigorous and energetic, but not suspected of enthusiasm, now well stricken in years, who had spent the best part of his life in studying the law and administering justice, who had a wife and many children and grandchildren the objects of his tender attachment — rose up as soon as the King had concluded his speech, and, asking the Archbishop to invest him with the cross, was enlisted as a crusader with all the vows and rites used on such a solemn occasion.

A.D. 1188. Glanville takes the cross.

So much in earnest was he, that he wished forthwith to set forward for the Holy Land. From the accumulated profits of his office, he was abundantly able to equip himself and the knights whom he meant to take in his train, without following the general example of selling or mortgaging his lands. But the young princes engaged in another unnatural rebellion, and the King laid his commands on the Chief Justiciar to delay his journey till tranquillity should be restored. Before this consummation, the unhappy Henry expired at Chinon of a broken heart.

Sept. 3. 1189.

Glanville was present at the scene when, on the approach of Richard, blood gushed from the dead body, in token, according to the superstition of the age, that the son had been the murderer of the father. The new monarch, now stung with remorse, renounced all the late companions of his youth who had misled him, and offered to confirm all his father's councillors in their offices. This offer was firmly refused by Glanville, who had serious misgivings as to the sincerity of Richard, and who, now wearing the cross, was bound by his vow, as well as incited by his inclination, to set forward for the recovery of Jerusalem. However, he discharged the duties of the office for some weeks, till a successor might be appointed; and he attended, with the rank of Chief Justiciar, at Richard's coronation — when he exerted himself to the utmost to restrain the people from the massacre of the Jews, which disgraced that solemnity.

Some authors represent that he was deprived of his office

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at the death of Henry II., and obliged to pay a heavy fine for imputed judicial delinquency; but there is no foundation for the story, beyond his voluntarily contributing a sum of money towards the equipment of the army now embarking for Palestine. He was treated with the greatest favour not only by the new King, but by Eleanor, the Queen Mother, who had long been his prisoner, and who, being now set at liberty, was destined to be Regent of the kingdom.*

Richard himself had taken the cross, and was preparing for that glorious expedition in which, by his unrivalled gallantry, he acquired his appellation of "the Lion-hearted." He therefore asked Glanville to accompany him, and to fight under his banner. But such was the impatience of the Chief Justiciar to tilt with a Saracen, that he declined the offer, and joined a band of Norman knights, who were to march through France and to take ship at Marseilles for Syria.

Glanville is killed at the siege of Acre, A. D. 1190.

Unfortunately, no farther account has come down to us of his journey; and we read no more of him, except that in the following year he was killed, fighting valiantly at the siege of Acre.†

* Richard of Devizes says, "Ranulfus de Glanvilla, regni Anglorum rector et regis oculus, depostatus et custodiæ traditus, ire saltem sibi liberum et redire redemit quindecim mille libris argenti, et cum hoc nomen Glanvilla tanta fuisset die præterito, nomen scilicet super omne nomen, ut quisque, cui concessum esset a Domino, loqueretur inter principes et adoraretur a populo, proximo mane non superfuit unus in terra qui vocaretur hoc nomine. Ranulfus de Glanvilla, quo multus fuerat suo tempore desertior dum præpotuit, privatus jam factus ex principe, in tantum hebuit præ dolore, ut gener ejus Radulfus de Ardenna ejusdem oris ratione deperderet quicquid oris ejus judicio fuerat consecutus." (p. 7, 8.) But this chronicler, like some of his successors, is much given to exaggeration, and sacrifices accuracy for effect. — See Hoveden, iii. 20—35.

† Richard of Devizes, after stating that Baldwin, Archbishop of Canterbury, and Ranulf de Glanville, with others, had been sent forward by the Kings of France and England with a powerful army, adds, "ex quibus Baldewinus archiepiscopus et Ranulfus de Glanvilla obierunt in obsidione civitatis, quam Latini *Acras*, Judæi *Accaron* dicunt, dum ad huc reges in Sicilia morarentur." *Ricardus Divisiensis, de Rebus gestis Ricardi Primi*, p. 19.

In *Stowel* v. *Lord Zouch*, Plowden 368. *b.*, where Catline C. J., in citing the authority of his great predecessor, says, "Glanville was a judge of this realm a long time ago, for he died in the time of King Richard I. at the city of Acres in the borders of Jury."

Lord Coke merely says, "Provectiori ætate ad Terram Sanctam properavit, et ibidem contra inimicos crucis Christi strenuissime usque ad necem dimicavit." — *Preface to 8th Rep.* xviii.

Spelman says, "Exutus autem est officio Justitiarii anno I. Ricardi I. et deinde profectus in Terram Sanctam in obsidione Acon moriturus est." — *Gloss.* p. 338.

This celebrated siege lasted two whole years, and Acre held out till after the

Of Glanville's numerous offspring, only three daughters survived him. They were married to great nobles; and he divided among them his vast possessions before he joined the crusade. Collateral branches of his family continued to flourish till the end of the 17th century; and the name of Glanville, although now without a living representative, will ever be held in honoured remembrance by Englishmen.*

A.D. 1189. Hugh Pusar, Bishop of Durham, Chief Justiciar.

King Richard I., eager to rescue the holy sepulchre from the Infidels, and reckless as to the means he employed to raise supplies for the equipment of his expedition, upon the resignation of Ranulfus de Glanville, put up the office of Chief Justiciar to sale, and the highest bidder was Hugh Pusar, Bishop of Durham. The two extremes of the career of this prelate were marked by extraordinary profligacy, while during a long interval between them he was much honoured for his virtues and his good conduct. Being a nephew of King Stephen, he was brought up in the court of that worthless sovereign, and his morals were depraved even beyond the common licentious standard prevailing there. Nevertheless, taking priest's orders, he was made Archdeacon of Winchester; and, without any symptom of reformation, was appointed to the bishopric of Durham. If any sort of external decorum was preserved, the lives of churchmen were not strictly scrutinised in those days; but the archdeacon had openly and ostentatiously kept a harem in his parsonage-house, and the Archbishop of York refused to consecrate him, — objecting, that he had not reached the canonical age for being made a successor of the apostles; and reprobating his bad moral character, evidenced by his having three illegitimate sons by as many mothers. The bishop elect complained bitterly of this stretch of authority, and appealed to Rome. While the appeal was pending, both the Pope and the Archbishop died; and Hugh, backed by royal solicitations, induced the new Archbishop to consecrate him, on an expression of penitence and promise of amendment.

22d Jan. 1153.

His licentious youth.

arrival of Richard I. in the summer of 1191, when he performed the prodigies of valour which placed him at the head of crusading chivalry.

* See Lord Lyttleton's Hist. of H. II., vol. iii. 135—440. Rot. Cur. R. 6. R. I. Roger de Wendover, iii. 36. Hoveden, ad an. 1190.

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His meritorious middle age.

He was as good as his word; and, turning over a new leaf, he devoted himself to his spiritual duties, and became a shining ornament to the episcopate. So he went on steadily for no less than forty years. During this long period he built many churches in his diocese, and he added to his cathedral the beautiful structure called the GALILEE, which remains to this day a monument of his taste. So much respected was he by his own order, that he represented the province of York at the Council of Tours in 1163, and at the Council of Lateran in 1179.

His seven years of blindness.

But, at the moment when he was doing penance for his early sins, Godric, a pious hermit, had foretold that, "although he would long see the light very clearly, he was to be afflicted with blindness seven years before his death." His physical vision remained unimpaired till his eyes were finally closed; but the prophecy was supposed to be fulfilled by his foolish and vicious actions during the last seven years of his life.

A.D. 1189.

On the death of Henry II., of whom he had stood in great awe, he felt a sudden ambition to mix in politics, and he had an easy opportunity to gratify his inclination. Notwithstanding his princely liberality, he had amassed immense riches, and the highest offices and honours of the state were now venal. At a vast price, he bought from Richard the Chief Justiciarship, and the Earldom of Northumberland,—not then a mere empty title, but a dignity to which important jurisdictions and emoluments were still attached. It is said that the King, when girding him with a sword at his investiture, could not refrain from a jest upon his own cleverness in converting an old bishop into a young earl. Very soon afterwards he was installed in the AULA REGIS. Although he had a slight tincture of the civil and canon law, he was utterly ignorant of our municipal institutions. But he showed that all he cared for was to reimburse himself for his great outlay, and he was guilty of rapine and extortion exceeding any thing practised by any of his predecessors.

Richard, whose departure for Palestine had been delayed longer than was expected, heard of these enormities, and declared that, as a check upon the Bishop of Durham, William Longchamp, the Chancellor, must be associated with him

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in the office of Chief Justiciar. Pusar, having in vain remonstrated, came to the compromise that England should be divided between the two Justiciars, and that all the counties north of the Trent should be left at his mercy. He now tried to levy upon this poorer moiety the revenue he had expected to draw from the whole kingdom; but at last made himself so odious, that Longchamp marched a small military force to the north, deposed him entirely from the Chief Justiciarship, deprived him of the Earldom of Northumberland, made him prisoner, and kept him in close custody till he gave hostages to deliver up all the castles committed to his charge. He appealed to Richard, now performing prodigies of valour in the East; and that monarch, wishing, or pretending to wish, to do him justice, sent letters ordering him to be restored: but these were entirely disregarded by Longchamp. The ex-Chief Justiciar died unredressed and unpitied, affording (as it was said) a fine illustration of the text of Scripture, "No man can serve God and Mammon." *

A.D. 1191.

His death.

William Longchamp, who, uniting in himself the offices of Lord Chancellor and Chief Justiciar, ruled England during the absence of Richard in Palestine and his captivity in Germany, is one of the most interesting characters to be found in mediæval history; but I have already published whatever I have been able to collect respecting his extraordinary career.†

William Longchamp.

After his fall, WALTER HUBERT, who, from being a poor boy, educated out of charity by Ranulfus de Glanville, had reached the dignity of Archbishop of Canterbury, had the secular office of Chief Justiciar likewise bestowed upon him.

Walter Hubert, Archbishop of Canterbury, Chief Justiciar.

From the rolls of the Curia Regis still extant ‡, and from

* "Ranulphus de Glanevilla Regni Procurator, cum jam grandævus esset et videret a Rege novitio multa minus consulte et improvide actitari, solemniter renuncians officio, Dunelmensem Episcopum habuit successorem, qui nec obluctans injunctum a Rege suscepit officium: sed si proprio fuisset contentus officio, divini juris multo decentius quam humani Minister extitisset, cum nemo possit utrique prout dignum est deservire, secundum illud Dominicum, *Non potestis Deo servire et Mammonæ.*" — *Chron. Walt. Hem.* ch. 48. See God. Præs. 753. Roger de Wendover, ii. 298.; cxi. 8—15.

† Lives of Chancellors, vol. i. ch. v.

‡ The Rolls of the Curia Regis held before the Chief Justiciar, from the 6 Richard I. 1194, have been published by the Record Commissioners. Sir Francis Palgrave, in his Introduction to them, says, in very striking language,—

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A. D. 1193. Case of William with-the-Long-Beard.

contemporary chroniclers, I am enabled to give an account of the manner in which Hubert, while Chief Justiciar, dealt with a demagogue, who for some time gave great disturbance to his government. William Fitz-Osbert, a citizen of London, being bred to the law, is denominated "legis peritus," although he possessed but a very small portion of learning; he was of a lively wit, and surpassing eloquence; and he is the earliest instance recorded in England of a man trying to raise himself by popular arts. His stature being mean, he endeavoured to give importance to his looks by nourishing his beard, contrary to the custom of the Normans. Hence he was generally called "*Willyam-with-the-longe-berde.*" Although of Norman descent, he pretended to take part with the Anglo-Saxons, and to be their advocate. The dominant race settled in London had a town of their own, "Ealdormannabyrig," still known as the ALDERMANBURY; while the rest of the city was inhabited by the oppressed natives. *Longbeard* first distinguished himself by speaking at the Folkmotes, which were still allowed to be held for laying on assessments, although not to assist in making laws as in former times. Not succeeding so well as he expected in obtaining the applause of the mob, he suddenly became a great courtier, and tried to gain the favour of Cœur de Lion by pretending that he had discovered a treasonable plot, into which his elder brother, Richard Fitz-Osbert, had entered. Having appealed him of high treason before the Curia Regis, he swore that, at a meeting to consider of a further aid to pay the King's ransom, he had heard the appellee say, "In recompence for the money taken from me by the Chancellor within the Tower of London, I would lay out forty marks to purchase a chain in which the King and the Chancellor might be hanged together. Would that the King might always remain where he now is! And, come what will, in London

"Comparing these records with the commentary furnished by the Year Books, and, lastly, opening the volumes of the Reporters properly so called, we could—if human life were adequate to such a task—exhibit what the world cannot elsewhere show, the judicial system of a great and powerful nation running parallel in development with the social advancement of the people whom that system ruled." The Rolls of the Curia Regis are not so interesting as might have been expected, as they for the most part merely state the names of the parties, the nature of the action, the plea, and the judgment.

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we never will have any other king except our mayor, Henry Fitz-Ailwin, of London Stone." The appellee pleaded *not guilty;* and, availing himself of his privilege as a citizen of London to defend himself by compurgation, many respectable persons came forward to attest their belief in his innocence; and he was acquitted. *Longbeard* complained bitterly that Hubert, the Chief Justiciar, had decided the cause corruptly; and, returning to the patriotic side, he now contrived, by inveighing against Norman oppression, to raise an insurrection against the Government, 52,000 citizens enrolling themselves as his adherents. He likewise called a folkmote in St. Paul's Churchyard, and here delivered a forcible and captivating discourse to the assembled people, inviting them to adhere to him steadily as the protector of the poor and the vindicator of their ancient rights. For some time he set the Government at defiance, but, his popularity rapidly declining, Hubert, the Chief Justiciar, sent a body of troops into the City to apprehend him. After a slight skirmish, he was obliged to take refuge in the church of St. Mary-le-Bow, and he retired to the lofty spire, in which he proposed to stand a siege. The Archbishop, having in vain sent him a summons to "come out and abide the law," thought that he might use a freedom with his own church which would have been sacrilege in a layman, and directed that the structure should be set on fire. *Longbeard* was obliged to abandon his stronghold, and, attempting to escape, he was secured, bound with fetters and manacles, and carried to the Tower of London. Here an extraordinary sitting of the AULA REGIS was held; and the "proceres," or more wealthy citizens of London, being called in as a jury, or as assessors, they advised that he should be condemned to instant death. Sentence was immediately pronounced, and executed with great barbarity. Stripped naked, and tied by a rope to a horse's tail, *Longbeard* was dragged over the rough streets and flinty roads to Tyburn, where his lacerated and almost lifeless carcass, after the infliction of many cruelties, was hung in chains.*

* Rot. Cur. Regis, vol. i. 69. 95. Hoveden, 668. 765. Neubrigensis, 557. 562. Diceto, 691. M. Paris, 181. Gervasius, 1591. Knyghton, 1412. Sir

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A. D. 1196.

Hubert thus acquired a temporary triumph; but his violation of the right of sanctuary, and the outrage he had committed on a church of uncommon sanctity, caused great scandal, and afterwards led to his own fall. The clergy, as a body, took up the matter, partly from religious feeling, and still more from envy towards the Archbishop; and the monks of Canterbury in particular complained to the Pope that their Archbishop acted as a Justiciar, sitting as a judge in capital cases — whereby he not only broke the canons forbidding ecclesiastics to meddle in affairs of blood, but was so entirely engrossed in secular pursuits that all his ecclesiastical duties were entirely neglected and cast aside. They concluded their accusation with a statement how, "contrary to all the privileges and immunities of Holy Church, he had violated the sanctuary of St. Mary-le-Bow, whence *William-with-the-Loud-Berde* was forcibly taken, condemned to death, and hanged on the tree." The Pope addressed a mandate to Richard, requiring him, as he tendered his soul's health, to remove the Archbishop from the Justiciarship. This would have been quite enough to satisfy the petitioners; but, to the great mortification of the hierarchy, his Holiness furthermore enjoined the King thenceforth to abstain from employing any prelate in secular affairs, and he addressed a concurrent mandate to the prelates strictly prohibiting them from accepting employments so uncongenial to their station in the Church. The King obeyed, and Hubert was deposed from the Chief Justiciarship; but the general regulation produced very little fruit, for the grasping Archbishop contrived to obtain a high civil office in the next reign, and ecclesiastical ambition soon became more rampant in England than it had ever been.*

Hubert deposed from the Justiciarship.

Geoffrey Fitzpeter Chief Justiciar.

King Richard appointed, in Archbishop Hubert's place, GEOFFREY FITZPETER, a powerful Baron, with great pos-

Francis Palgrave, in his Introduction to the Rotuli Curiæ Regis, quotes an authority which I have not seen, "Annals of London contained in Liber de Antiquis Legibus, MS.," describing "how the Heretyke called *With-the-Longe-Berde* was drawen and hanged for heresye and cursed doctryne that he had taughte." From this it would appear that the Archbishop had attempted to give a religious turn to the affair, and excuse his own sacrilege by imputing heresy to his victim.

* Lives of Chancellors, vol. i. ch. vi. Gervasius, 1614. Hoveden, 779. M. Paris, 193.

sessions both by inheritance and marriage; and, like Glanville, well skilled in the laws and customs of the realm. He had acted as a Justice of the Forest, as a Justice Itinerant, and as a Puisne Judge in the Aula Regis.* He was at the same time Sheriff of the united counties of Hertford and Essex, in which he held many manors. His military talents were likewise distinguished. The contemporary chroniclers inform us that, as soon as he was appointed "Proto-Justiciarius Angliæ," he led a powerful army against the Welsh and entirely defeated the restless Gwenwynwyn, who had besieged the English garrison placed by William de Brause in Maud's Castle. Three thousand seven hundred of the enemy are said to have been killed in the conflict, and the single Englishman who fell is said to have been killed by the erring shaft of a fellow soldier.†

On the death of Richard I., Fitzpeter was continued in his office of Chief Justiciar by John, and was very active in executing the measures of the Government, as well as in the administration of justice. "At the same time he appears to have joined in the King's amusements, as a payment of five shillings was made to him, *ad ludum suum.* In 11 John there is a curious entry on the Great Roll of his fining in ten palfreys and ten hawks, that the King of Scotland's daughter might not be committed to his custody; but he was excused the palfreys. He was, no doubt, famous for his choice of hawks, for which he seems to have had an expensive taste, if we may judge from his having purchased one from the King at the extravagant price of four tunels of wine."‡ Withal he must have been a *bon vivant,* for we are told that he paid a penalty for breaking the canons of the Church by eating flesh on fast days.§ A.D. 1199.

However, neither by the great nor the agreeable qualities which he possessed could he long retain the favour of the

* On this account he was exempted from the payment of scutage and other assessments, and in the entry recording the fact he is described as "resident at the Exchequer." — *Mad. Exch.* ii. 390. *n.*

† Hoveden, 780, 781. Gervasius, 164, 165. R. de Diceto, 703.

‡ Foss's Judges of England, vol. ii. 64., cites 1 Rot. de Præst. 7 John. Cole's Documents, 272. 275. Mad. Exch. i. 462. Rot. de Fin. 6 John, 243.

§ Rot. Misæ. 14 John. Cole's Doc. 248.

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capricious tyrant now on the throne: and, having in vain remonstrated against the course of policy which produced such disasters, he resigned his office. Till the year 1213 he remained in a private station. Then he was reappointed, at the request of the Barons, in the hope that he might put an end to the confusion and misery in which the kingdom was involved. All ranks submitting willingly to his sway, he had wonderful success in restoring order and the due administration of justice, and every one was delighted except the infatuated John, who grieved to see himself crossed in his love of tyranny. Unhappily, this able Chief Justiciar died suddenly in the following year. When the King heard of his death, he laughed loudly, and said, with a profane oath, "Now I am again King and Lord of England!"*

A.D. 1202.

A contemporary historian thus sounds his praise: — "He was the chief pillar of the state, — being a man of high birth, learned in the law, possessed of great wealth, and closely connected with all the chief nobility by blood or friendship. Hence the King dreaded him above all other mortals. He steadily ruled the realm. But, after his decease, England resembled a ship tossed about in a storm without a rudder."†

Trial of the case of Fauconbridge *v.* Fauconbridge.

Shakspeare, in his drama of KING JOHN, introduces this Chief Justiciar as one of the *dramatis personæ*, and gives us a trial before the AULA REGIS, the King himself being present in person. This was what the lawyers call a "*legitimacy case*," the action being brought to recover the large estates, in Northamptonshire, of the late Sir Robert Fauconbridge, Knt., which were claimed by the plaintiff, as his son and true heir, on the ground that an elder brother who had got possession of them was the son of Richard Cœur de Lion. The trial is represented as having been conducted with great fairness; for the doctrine was admitted, "Pater est quem nuptiæ demonstrant," subject to the exception of the absence

* "Accepto verò de morte ejus nuncio, Rex cachinnando dixit: 'Per pedes Domini, nunc primò sum Rex et Dominus Angliæ.'" — *M. Par. in. ann.* 1214.

† "Erat autem firmissima Regni columna; utpote vir generosus, legum peritus, thesauris, reditibus et omnibus bonis instauratus, omnibus Angliæ Magnatibus sanguine vel amicitia confœderatus. Unde Rex ipsum præ omnibus mortalibus sine delectione formidabat: ipse enim lora regni gubernabat. Unde post ejus obitum, facta est Anglia quasi in tempestate navis sine gubernaculo." — *M. Paris.*

of the husband *extra quatuor maria*, and it was satisfactorily shown that at the time to which the eldest son's origin must by the laws of nature be ascribed, while Lady Fauconbridge was in England, old Sir Robert was employed upon an embassy in Germany. Much weight was given to the evidence of the Dowager Queen, Eleanor, who declared that the defendant had "a trick of Cœur de Lion's face," that she "read in his composition the tokens of her son, and that she was sure she was his grandame." So, by the advice of Lord Chief Justice Fitzpeter, judgment was given for the plaintiff; while the defendant, kneeling before the King, rose SIR RICHARD PLANTAGENET.*

In right of his wife, this chief of the law became Earl of Essex; and the earldom was enjoyed by his descendants till 1646, when it became extinct by the death of Robert Devereux, Earl of Essex, the great parliamentary general, without issue.†

John's intervening Chief Justiciars, Simon de Pateshull, Eustace de Fauconberg, Richard de Mucegos, Walter de Crespiny, and Saherus, Earl of Winchester, did not gain much celebrity either by their administration of the law or by their military exploits. When Fitzpeter died he was succeeded by PETER DE RUPIBUS‡, who seems to have enjoyed great admiration in his own time, although he has not been much known by posterity. He was a native of Poictou, and distinguished himself as a stout soldier in the wars of Richard I., by whom he was knighted. Although, by his education and habits, better qualified to command an army than to preside over a diocese, yet, being liked by King John, who did not stand on such niceties, he was made Bishop of Winchester, A.D. 1204. and afterwards Chief Justiciar.§ His elevation caused much A.D. 1215.

Peter de Rupibus.

* *King John*, Act I. Scene I. This scene corroborates the supposition that Shakspeare, either before he left Stratford or on his coming to London, had been employed in an attorney's office. He is uniformly right in his law and in his use of legal phraseology, which no mere quickness of intuition can account for.

† Dug. Bar. i. 703. See Roger de Wendover, cxi. 49—273.

‡ Sometimes called "*Des Roches.*"

§ This commission is still extant: "Rex Archiepiscopis, &c. Constituimus Justitiarium nostrum Angliæ P. Winton. Episcopum quamdiu nobis placuerit ad custodiendum loco nostro terram nostram Angliæ et pacem regni nostri.

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envy, which he was at no pains to soften; and on this occasion he remained but a short time in office, although he showed vigour and ability.* His great rival was Hubert de Burgh, who contrived within a year after his elevation to supersede him, and to hold the office of Chief Justiciar till the death of King John.

A.D. 1214.

A.D. 1216.

Peter de Rupibus in favour with Henry III. A.D. 1221.

Peter de Rupibus, however, was again in favour at the commencement of the next reign, and was appointed tutor to the infant Sovereign, who became very much attached to him. He was employed at the coronation to consecrate his royal pupil; and, being restored to his office of Justiciar, he was first minister as well as supreme judge. However, he increased the ill-will which prevailed against him by advising the resumption of grants of the domain and revenues of the Crown which the King, with a boyish levity, had lavished upon his courtiers; and he made himself still more unpopular by betraying such a partiality for his countrymen, the Poictevans, that they engrossed almost every place of honour or profit. About this time sprung up in England that jealousy of foreigners, and that disposition to despise them, which have ever since actuated the great mass of our countrymen. The Normans had been highly popular at the Court of the later Anglo-Saxon Kings. Having conquered the country, they long regarded all of Anglo-Saxon blood as helots, while they treated Frenchmen and Italians who came here in quest of preferment as equals. But, after the loss of the Continental possessions which had belonged to the Kings of England, our nobles of Norman extraction began to consider themselves as Englishmen, and there was a rapid fusion of the two races into one nation. The intercourse of the inhabitants of this island with the Continent was very much lessened, and the prejudices as well as the virtues of islanders gathered strength among them from generation to generation. Peter de Rupibus excluded all who were born in England from employment, and treated

Ideo vobis mandamus quod ei tanquam Justic. nostro Angliæ intendentes sitis et respondentes. Dat." &c.

* "Diu non duravit in officio: prudens autem et potens."— *Spel. Gloss.* 340.

them with contumely, after the fashion of the Justiciars of the Conqueror and his sons. By preferring a foreigner to a piece of ecclesiastical preferment which was coveted by the famous Roger Bacon, then one of the King's chaplains, he incurred the enmity of that philosopher, who took every opportunity, both in his sermons and in private conversation, to set the King against him. It is related that on one occasion Roger asked Henry "what things a prudent pilot in steering a ship was most afraid of?" and Henry answering that "Roger himself ought best to know, as he had himself made many voyages to distant parts," Roger replied, "Sir, he who steers a trireme, and he who steers the vessel of the state, should, above all things, beware of *stones* and *rocks*, or 'Petræ et Rupes.'" Hubert de Burgh, his old rival, took advantage of the combination against the favourite, and contrived again to turn him out from the place of Chief Justiciar, and to become his successor.

A.D. 1227. He takes the cross.

Peter de Rupibus, now yielding to the passion of the age, took the cross, and found no difficulty in obtaining a dispensation to bear arms in so pious a cause, although wearing a mitre. He is said to have fought valiantly in Palestine, but we have no particulars of his single combats, or the numbers he killed in the general *mêlée*.*

A.D. 1231.

After an absence of several years he returned, and all the affection of his royal pupil towards him was revived. He again had the patronage of the Court, and again he yielded to the besetting sin of preferring his countrymen. "Naturales," says M. Paris, "curiæ suæ ministros a suis removit officiis, et Pictavenses extraneos in eorum ministeriis surrogavit." He even carried his insolence so far as to declare publicly that "the Barons of England must not pretend to put themselves on the same footing with those of France, or assume the same rights and privileges."† The consequence was, that the English Bishops combined against him with the English Barons, and a law was passed, to which the King most un-

* Spelman, who had examined all the chronicles, is obliged to say in general terms, "Exacto munere Terram Sanctam cruce-signatus proficiscitur. Multa illic ejus auspiciis gesta sunt feliciter." — *Gloss.* p. 346.

† M. Paris, 265.

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willingly gave the royal assent, "That all foreigners holding office under the Crown should be banished the realm." They went so far as to declare "that if the King did not immediately dismiss his foreigners they would drive both him and them out of the kingdom, and put the crown on another head more worthy to wear it."* Peter made a stout resistance, but, owing to the jealousy of his spiritual brethren, he was excommunicated and obliged to fly.

A.D. 1233.

He gains a battle for the Pope.

He went to Rome to appeal against the injustice which had been done him. Here his military prowess stood him in good stead. Finding Pope Gregory IX. engaged in war, he put himself at the head of his Holiness's army and gained a great battle. In consequence, he was not only absolved from excommunication, but ordered to be reinstated in his bishopric. Accordingly he returned to England, and was received in solemn procession by the monks and clergy of his cathedral. At the last stage of his career he devoted himself wholly to his spiritual duties, and, in the odour of sanctity, he died, in his episcopal palace at Farnham, on the 5th of June, 1238. He was buried in the north aisle of Winchester Cathedral, where is still to be seen a mutilated figure representing him in black marble, with a mitre on his head, but without a sword by his side. Although he had gone through so many adventures, founded several religious houses both for monks in his own diocese and for pilgrims at Joppa, and filled such a space in the eyes of his contemporaries, he is now only mentioned in the dry chronicles of the Bishops of Winchester or of the Chief Justiciars of England.

A.D. 1238. His death.

Hubert de Burgh.

His rival still makes a conspicuous figure in English history. HUBERT DE BURGH had the advantage of being born in England, although, like all the nobility of the time, he was of foreign extraction. William Fitzadeline, his father's elder brother, had been Steward to Henry II., and, accompanying that monarch into Ireland, established there the powerful and distinguished family now represented by my friend the present Marquess of Clanricarde. Hubert, afterwards the famous Justiciar, was early left an orphan, and was very

* M. Paris, 265.

slenderly provided for, but he received from nature the highest gifts both of person and understanding, and, through the care of his maternal relations, he was carefully educated not only in all martial exercises but in all the learning of the age. He gained some distinction by serving in the army under Richard I., towards the conclusion of the reign of that monarch*; and, on the accession of King John, he was sufficiently prominent at court to be one of the pledges that the convention of the new Sovereign with Reginald, Earl of Boulogne, should be faithfully observed.† Soon after, he was made Lord Chamberlain; and now it is that Shakspeare assigns to him the custody of Arthur, the son of Geoffrey.

Hubert de Burgh under Richard I.

It is not easy to discover the view taken by our immortal dramatist of the character of Hubert de Burgh, whom he represents with a very tender heart, but who is made to say, when solicited to rid the usurper of the "serpent in his way," "He shall not live;" and who deliberately and seriously makes preparations for putting out the poor young Prince's eyes with hot irons.‡ According to true history, the Chamberlain always showed kindness to Arthur, and never on any occasion pandered to the evil inclinations of John. Yet he enjoyed the favour of this capricious tyrant, and was constituted by him Warden of the Marches of Wales, Governor of the Castle of Dover, and Seneschal of Poictou. He was likewise sent by him as ambassador to France, and he negotiated a peace between the two kingdoms. In the midst of these high employments, he condescended to act as Sheriff of several English counties, being responsible for the pre-

His character by Shakspeare.

* One of the earliest notices of him in our records is, that he was surety to the Crown for Petrus de Maillai, who agreed to pay 7000 marks, "pro habenda in uxorem Ysabellam filiam Roberti de Turnehum cum jure suo," &c.—*Mad. Exch.* ii. 211.

† Rot. Chart. 1 John, 30. 36.

‡ Hubert exclaims *aside*, and therefore sincerely —:

"If I talk to him, with his innocent prate
He will awake my mercy, which lies dead:
Therefore I will be sudden, and despatch."

And, after the fit of compassion had conquered him, he thus addresses the Prince: —

"Well, see to live: I will not touch thine eyes
For all the treasure that thine uncle owes:
Yet am I sworn, and *I did purpose*, boy,
With this same very iron to burn them out."

King John, act iv. sc. i.

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servation of the peace, and for the due collection of the royal revenues within them.

In the controversies which arose between John and the Barons, Hubert remained faithful to his master, but gave him good advice, and tried to instil into him some regard for truth and plighted faith. Being present with him at Runymede, he prevailed upon him to sign the Great Charter, and he afterwards sincerely lamented the violation of its provisions.

Though praised warmly by historians for his open and straightforward conduct, I am afraid that he was seduced into duplicity and intrigue by his desire to obtain the office of Chief Justiciar, the darling object of his ambition. He professed much friendship for Peter de Rupibus, but he is suspected of having tripped up his heels in the end of the year 1215, and to have taken an unfair advantage of the unpopularity under which this prelate then laboured. He was

A.D. 1215. now appointed Chief Justiciar, but had little enjoyment in his elevation. The kingdom was in a state of distraction from internal discord, and its independence was threatened by the invasion of a French army. He gallantly defended Dover Castle against Prince Louis, and gained a considerable victory over a French fleet in the Channel. The administration of justice, however, was long entirely suspended, insomuch that Hubert had never been installed in the AULA REGIS, when his functions were determined by the King's miserable death in the Castle of Newark.

28th Oct. 1216. For the first three years of the new reign, the office of Chief Justiciar was superseded by the appointment of the Earl of Pembroke, the Earl Marshall, as Protector of the

A.D. 1219. realm, with absolute power. On the death of that nobleman, Hubert was restored to the office of Chief Justiciar, and there was an apparent reconciliation between him and Peter de Rupibus, who was intrusted with the education of the young King.* The wily Poictevan, availing himself of his

A.D. 1221. influence over the mind of his pupil, by and by had his revenge, and, once more Chief Justiciar, he engrossed all the powers of the Crown. Hubert retired from Court, and pru-

* M. Paris, 247—251. Waverley, 183. Gul. Armor. 90.

dently "bided his time." Perceiving the odium into which his rival had fallen, he formed a confederation of nobles and churchmen against him, and compelled him to seek for safety by taking the cross, and setting off for the Holy Land.* A.D. 1224.

For some years Hubert exercised despotic sway in England. He was created Earl of Kent, and, in the vain hope of perpetuating his power, he obtained a grant for life of the office of Chief Justiciar, which hitherto had always been held during pleasure. Moreover, he usurped a similar appointment to the Chief Justiciarship of Ireland.

Hubert de Burgh appointed Chief Justiciar for life.

When without a rival, it is admitted that he conducted himself honourably as well as prudently. He displayed a knowledge of the law, and a zeal to do justice to all suitors who came before him, for which he had not hitherto had credit; while he preserved tranquillity at home, and raised the consideration of England with foreign nations to a pitch unknown since the death of Cœur de Lion. "Multa benè

* Dr. Lingard gives, from the contemporary chronicles, the following graphic account of "an event which established the authority of Hubert, and induced his rival to banish himself from the island under pretence of making a pilgrimage. Among the foreigners enriched by John, was a ferocious and sanguinary ruffian named Fawkes, who held the castle of Bedford by the donation of that monarch. At the assizes at Dunstable, he had been amerced for several misdemeanors in the sum of 3000*l.*; but, instead of submitting to the sentence, he waylaid the judges at their departure, and, seizing one of them, Henry de Brinbrook, confined him in the dungeon of the castle. Hubert willingly grasped the opportunity of wreaking his vengeance on a partisan of the Bishop of Winchester. The King was induced to invest in person the fortress of this audacious rebel; and the clergy spontaneously granted him an aid from themselves and their free tenants. Two towers of wood were raised to such a height as to give the archers a full view of the interior of the castle; seven military engines battered the walls with large stones from morning till evening; and a machine, termed a *cat*, covered the sappers in their attempts to undermine the foundations. Fawkes, who had retired into the county of Chester, had persuaded himself that the garrison would be able to defend the castle for twelve months. But the barbican was first taken by assault; soon afterwards the outer wall was forced, and the cattle, horses, and provender, in the adjacent ward, fell into the hands of the victors: a breach was then made in the second wall by the miners; and the royalists, though with considerable loss, obtained possession of the inner ward: a few days later the sappers set fire to the props which they had placed under the foundations of the keep; one of the angles sank deep into the ground, and a wide rent laid open the interior of the fortress. The garrison now despaired of success. They planted the royal standard on the tower, and sent the women to implore the King's mercy. But Hubert resolved to deter men from similar excesses by the severity of the punishment. The knights and others to the number of eighty were hanged; the archers were sent to Palestine to fight against the Turks; and Fawkes, who now surrendered himself at Coventry, was banished from the island, together with his wife and family."—See M. Paris, 270. Dunst. 142—145. New Rym. 175. Rot. Claus. 639. Annal. Wig. 486.

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in re judiciariâ," says Matthew Paris, "multa strenue in militiâ gessit."*

The only grave act of misgovernment imputed to him was the annulling of the CHARTER OF THE FOREST,—a concession which was most reasonable, and which had been passionately claimed both by the nobility and the people.† However, Hume doubts whether this act was done by his advice, characterising him as "a man who had been steady to the Crown in the most difficult and dangerous times, and who yet showed no disposition in the height of his power to enslave or oppress the people."‡

But, while others were obliged to surrender valuable possessions which they held under royal letters patent, he was annually enriched by new grants of forfeitures, escheats and wardships; and those whom he disobliged declared that he was guilty of much greater rapacity than his banished rival, or any of his predecessors. The temper of the times may be estimated from the derisive title of "Hubert's Folly" given to a castle ineffectually erected by him to repress the incursions of the Welsh.§ An unsuccessful expedition into France, in which he accompanied the King, inflamed the public discontent, and precipitated his fall.

A.D. 1232.

It so happened that at this very time Peter de Rupibus returned to England from Palestine, having been preceded by exciting reports of the gallantry which he had displayed in assisting to recover the holy sepulchre, while his old enemy had been enjoying ease and amassing riches at home. All now predicted the fall of the obnoxious minister. By the subtle advice of his enemies, instead of any violence being offered to him a great council was called, and an order was made upon him to answer for all the wardships which he had

Hubert removed from his office of Chief Justiciar, and

* M. Paris, ad ann. 1232. But though very scrupulous while sitting on the bench, he was, like other Justiciars, always ready to exercise a vigour beyond the law when in the field. In the 15th year of Henry III., hearing that the Welsh had committed great outrages, especially about Montgomery, he marched thither, and, having taken many prisoners, he struck off their heads and sent them to the King; which so provoked Lewellyn, Prince of Wales, that, raising all the power he could, he retaliated on the English, setting fire even to the churches, in which crowds who had taken sanctuary were burned.

† M. Paris, p. 232.

‡ Hist. of Eng. ii. 159.

§ Roger de Wendover, iv. 173.

held, all the rents of the royal demesnes which he had received, and all the aids and fines which had been paid into the Exchequer while he filled the office of Chief Justiciar. Seeing that his ruin was determined upon, he took to sanctuary in the priory of Merton. Being immediately removed from his office of Chief Justiciar, he asserted that he held the appointment for life, by a grant under the Great Seal; but he was told that the patent was illegal and void; and Stephen de Segrave was appointed his successor, at the instigation of Peter de Rupibus, who at present preferred the enjoyment of power without the envy of office.

takes to sanctuary, A.D. 1232.

Proclamation was now made through the City of London by a herald that "all manner of persons who had any charge to make against the ex-Chief Justiciar were to come forth, and they should be heard." He was not only accused of treason to the King in the negotiations he had carried on, but of poisoning some of the nobility, of abstracting from the royal treasury a gem which had the virtue of rendering the wearer invulnerable, and of gaining the King's favour by sorcery and enchantment.

It was first resolved to drag him from his asylum by force, and, with this view, the Mayor of London and a body of armed citizens were sent to storm the priory; but the King, being warned by the Archbishop of Dublin of the sacrilege about to be committed, agreed to allow the accused to remain there unmolested for five months, that he might prepare for his trial. Hubert, finding himself no longer watched, left his sanctuary and proceeded towards Bury St. Edmunds to visit his wife; but the Government, afraid of his intentions, despatched a body of 300 horsemen with orders to arrest him and convey him to the Tower of London. Being in bed when he heard of their approach, he fled naked to the parish church of Boisars, and, on the steps of the altar, with the consecrated host in one hand and a silver cross in the other, awaited the arrival of his pursuers. Unmoved by the sanctity of the scene which they beheld, they seized him, placed him on horseback, tied his feet under the horse's belly, and proceeded with their captive towards the metropolis amidst the derisive shouts of the populace. The Bishop of

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Winchester, either respecting the privileges of the Church, or afraid of exciting sympathy in favour of a depressed rival, caused orders to be given that the prisoner should be replaced on the steps of the altar from which he had been taken; and the Sheriff of Essex was charged under penalty of death to prevent his escape. To render this impracticable, a deep moat was dug round the sacred building in which he was confined, and on the fortieth day hunger or despair compelled him to surrender himself. After a short confinement in the Tower, he was brought before a council of his peers assembled in Cornhill. The accusations against him being read, he declared that he should make no defence, and that he placed his body and his lands and goods at the King's pleasure. Sentence was passed, whereby, being allowed to retain his patrimonial inheritance and the lands he had gained by marriage, he was to forfeit all the rest of his property to the Crown, and was to be kept in safe custody in the Castle of Devizes till he should enter the order of the Knights Templars.

He is confined in the Tower of London.

The following year he was dreadfully alarmed by the news that the custody of this castle had been transferred to a retainer of Peter de Rupibus; and, that he might not fall into the hands of his mortal enemy, he dropped from the castle wall into the moat, in the obscurity of the night, and again took sanctuary in a neighbouring church. The guard hastened after him with lights and clubs, and, finding him prostrate before the high altar with a cross in his hands, carried him back again into stricter custody in the castle. The Bishop of Salisbury, within whose diocese this outrage had been committed, threatened to excommunicate all concerned in it. In accordance with the respective obligations and privileges of the parties, the King restored Hubert to the church from which he had been forced, but at the same time ordered the Sheriff of Wiltshire to besiege him there, and to starve him to death unless he chose voluntarily to surrender. In this desperate condition, two of the soldiers who had formerly served under him took compassion upon him, furnished him with some food, clothed him in a military habit, and, conveying him into Wales, put him under the protection of the Earl of Pembroke.

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A.D. 1239.

Afterwards, at an assembly of the Barons held at Westminster, the King preferred articles of impeachment against him, accusing him of usurping the office of Chief Justiciar, of treason, of rapacity, and of trying to prevent the King's marriage with the daughter of the Duke of Austria by saying that the King squinted, had a leprous appearance, and was not qualified for wedlock.* By his answers he denied all these charges, insisting that he had been appointed Justiciar by King John at Runnymede, and that he had never exercised the powers of that office without due warrant.†

Finally, a compromise was effected by which he surrendered four of his strongest castles, and released all right to the office of Chief Justiciar, — receiving a pardon for all offences, and being allowed to retain all his other possessions. He now became disgusted with public life, and he spent the rest of his days in seclusion. After repenting of his many irregularities, and receiving the consolations of religion, he quietly expired at Banstede, in Surrey, on the 12th day of May, 1243.

Death of Hubert de Burgh.

His body, being brought to London, was honourably interred in the church of the Black Friars in Holborn; a house to which he was a benefactor, having given it, amongst other things, his inn at Westminster, which became the town residence of the Archbishops of York, and afterwards the royal palace of Whitehall. He was married four times; all his wives being high born, and the last no less a person than the daughter of William the Lion, King of Scotland. This marriage took place at York when he was Chief Justiciar the second time, the Archbishop of Canterbury performing the ceremony, and the King and many of the nobility assisting at it.‡ His descendants, after flourishing for some generations, became extinct in the male line. He was not

* "Prorsus inutilis amplexibus alicujus ingenuæ mulieris."— *M. Paris.*

† 1 St. Tr. 14.

‡ Spelman, 340. See Dugdale's Baronage, and Hasted's History of Kent. Notwithstanding the open and solemn manner in which this marriage was celebrated, it was afterwards made an article of charge against him, "that whereas William, King of Scots, had delivered two of his daughters to John, King of England, under condition that the eldest should be married to Henry, Prince of England, or, in the event of his death, to Richard, Earl of Cornwall, yet that Hubert himself had taken her to wife while Henry was under age, and incapable

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an author like Glanville, but he is supposed to have patronised Bracton, who, as a jurist, was the great glory of this reign.

The most touching panegyric ever pronounced upon Hubert was by an Essex blacksmith, who, being required to forge fetters to secure him when they were carrying him prisoner to the Tower of London, exclaimed, "Do what you please with me; I would rather die than put fetters on him. Is he not the faithful and magnanimous Hubert, who has so often rescued England from the ravages of foreigners, and restored England to the English — who served his Sovereign so firmly and faithfully in Normandy and Gascony that he was sometimes compelled to eat horse-flesh, his very enemies admiring his constancy — who preserved Dover, the key of England, against the King of France and all his power — and who secured our safety by subduing our enemies at sea? May God be judge between him and you for such unjust and inhuman treatment!"*

After the rivalry of Peter de Rupibus and Hubert de Burgh had been terminated by the ruin of both, there began the struggle between the Crown and the Barons, which was not terminated till Simon de Montfort fell in the fatal battle of Evesham, more than thirty years afterwards. During this period, several reached the dignity of Chief Justiciar who were neither distinguished as judges, nor gained much political or military renown; and whom we shall, therefore, quickly despatch. Hubert's immediate successor was Stephen de Segrave, who had previously been a common justiciar, or puisne judge, in the AULA REGIS.† He was a rare instance, in those days, of a man being in a high civil station who was of obscure origin; but this was accounted for by the circumstance of his having begun his career as a churchman. He was then knighted, and showed extraordinary prowess in the

Stephen de Segrave. A.D. 1232.

of solemnizing the marriage." The defence made by Hubert was, "that he knew nothing of any treaty for marrying the Princess of Scotland to Henry or Richard; that the Princesses were to be bestowed in marriage by the King of England, with the approbation of the nobility, and that in consequence the eldest was so bestowed on him, Hubert." "If the controverted article existed," says Lord Hales, "we must admire the effrontery of Hubert; if not, the ignorance or malice of his accusers."— *Annals of Scotland*, i. 170.

* See Roger de Wendover, iv. 247—253.; Rot. Liberat. 10.; Rot. Pat. 11.; Roger de Wendover, iii. 293—380.; Rot. Claus. i. 319—322.

† Madd. Exch. i. 63. 65.

field. Last of all, he addicted himself to jurisprudence. When he had gained the object of his highest ambition, he cared little for the interests of the suitors, he recommended arbitrary measures to the King, and he enriched himself by rapacity. Having obtained a dispensation from the Pope to marry, notwithstanding his religious vows, he made good use of his privilege, for he had successively two wives of the distinguished families of Le Despencer and Hastings; and the Earls of Berkeley, the Earls of Egremont, and all the branches of the house of Howard, are descended from him.* CHAP. I.

Next came Hugo de Pateshulle, who had the reputation of integrity as a judge, but nothing is said of his learning or ability. He resigned his office on being elected Bishop of Lichfield and Coventry. Of his successor, Gilibertus de Segrave, still less is known, for the industrious Spelman is obliged to say, "Ego vero *nihil* de eo reperi:" and all that is related of Philip Lovel, who followed, is, that when he was thrust out of office by the Barons he died of grief.† Concerning John Maunsel, whom the Barons substituted as Chief Justiciar, I have already told all that is memorable, as he had before filled the office of Lord Chancellor.‡ A.D. 1235. Obscure Chief Justiciars. A.D. 1239. A.D. 1258.

We now come to a Chief Justiciar pronounced to have been "a distinguished soldier, and learned in the law of the land."§ A.D. 1259.

Hugh Bigod was a younger son of Roger Bigod, Earl of Norfolk; and, although he declined to take orders, he afforded an extraordinary instance of a layman acquiring a profound knowledge both of the civil and municipal law. At the same time he was initiated in military exercises, and was considered a gallant and accomplished knight. He was ap- Hugh Bigod Chief Justiciar.

* See Spelman, 341. He is thus pithily despatched by M. Paris:—"In juventute sua de clerico factus Miles, licet de humili genere oriundus, strenuitate sua ultimis diebus adeo ditatus et exaltatus est, ut inter primos regni reputatus, pro Justiciario habitus est, et omnia fere regni negotia pro libitu disposuit, sed semper plus sui amicus quam reipublicæ."

† "Judicio Baronum ejicitur ex officio, an. 1258, et sequenti anno pro mentis amaritudine diem obiit."—*M. Paris.*

‡ Lives of Chancellors, i. ch. vii.

§ "Nobiles firmius confœderati constituerunt sibi Justiciarium Militem illustrem et legum terræ peritum Hugonem Bigod, qui officium Justiciariæ strenuè peragens, nullatenus permittat jus regni vacillare."—*M. Paris.*

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pointed governor of the Castle of Pickering; and he accompanied the King in an expedition against the Welsh, as well to assist in negotiation as in the field. But he was persuaded by his elder brother, the famous Roger Bigod, the fourth Earl of Norfolk of that name, who headed the Barons against Henry, to join their party; and at the parliament held at
June 1258. Oxford, when the famous "PROVISIONS" were agreed to which vested the royal authority in a small oligarchy, he was constituted Chief Justiciar, and the Tower of London was committed to his charge.

Notwithstanding the violent manner in which he was appointed, he administered justice with great impartiality as well as vigour; and it was said that there had not been such a judge in England since Ranulfus de Glanville. With Roger de Thurkolby and Gilbert de Preston, two very learned
1159, 1160. *puisnies*, as his companions, he made a circuit through every county in the kingdom, putting down disturbances, punishing malefactors, and justly deciding civil rights. He cashiered Richard de Grey, who had been constable of Dover Castle, and warden of the Cinque Ports; and he was as little moved by the piteous looks of the poor as by the scornful glances of the powerful.*

For some reason not satisfactorily explained to us, while universally applauded, and while the party by whom he had been elevated was yet triumphant, he resigned his office when he had held it little more than a year. Some say that the Barons had resolved to make it an annual office; some, that they were jealous of his popularity; and others, that he would no longer be associated with them in their scheme to usurp the prerogatives of the Crown. He afterwards again took the King's side, and fought for him in the battle of Lewes. When the rout began, he fled the field, but was accompanied by the Earl of Warrenne and other brave knights. Notwithstanding the proofs they had given of their courage, they did not escape the satirical notice of Peter Langtoft, who thus described their flight: —

* "Angliam de comitatu in comitatum circuit, omnibus justitiam lance æquissima distribuens: vultu nec motus pauperum, nec potentum flaccidus supercilio."—See Spelm. 341.

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" The Erle of Warenne, I wote, he escaped over the se,
And Sir Hugh Bigote als with the Erle fled he."

When the royal authority was restored by the victory at Evesham, he was again appointed to the government of Pickering Castle; but the office of Chief Justiciar, such as it had been, was thought to be too powerful to be given to any subject, and it could not well be offered to him shorn of its splendor.

We have no particulars of the closing scene of his life, but it must have occurred soon after, as we know, from the Fine Rolls, that on the 7th of November, 1266, his son Roger did homage to the King at Kenilworth as heir to his lands.*

Hugh le Despencer Chief Justiciar.

On the resignation of Hugh Bigod, the Barons appointed Hugh le Despencer as his successor. This Justiciar was celebrated more for his bravery than for his learning; but if he was not always quite impartial as a judge, he at least had the merit of being always true to his party. He was said to have been descended from Robert le Despencer, steward to William the Conqueror; but as the royal steward for the time being was called, long after the Conquest, " Le Despencer," there is a doubt as to the time when the name of the office passed into a surname †, and whether his ancestor was not some noble who had held it more recently. Antiquaries dispute even as to the immediate ancestors of Hugh, although they all agree that he was of noble blood. We do not know much of his training, and he is first mentioned by historians as the companion of Richard, King of the Romans, the brother of Henry III., when that prince went into Germany in pursuit of the imperial crown. On his return to England he joined the Barons, who were in arms against the King; and when they carried the " Provisions of Oxford," he was one of the twelve commissioners in whom the exercise of the royal prerogative was vested. In the course of the following year,

A.D. 1257.

A.D. 1258.

* Rot. Fin. ii. 448.

† In Scotland the office retained its Saxon appellation, and hence we have the illustrious family name of Stewart or Stuart; although, generally speaking, French was spoken at the Scotch as well as at the English court — of which we have a proof in the office of taking charge of the royal table-linen having given rise to the name, so distinguished in our day, of *Napier*.

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he went as an Itinerant Justice into several counties, and gave entire satisfaction to the ruling powers, although not to the suitors.

When he was elected Chief Justiciar, there were soon heavy complaints against him; and his partiality or incapacity very much strengthened the reaction in favour of the royal authority. At last, Henry, having received from the Pope a dispensation from his oath to observe the "Provisions of Oxford," assembled a Parliament at Westminster, in which he had a large majority. Here Le Despencer being ordered to deliver up the Rolls of Chief Justiciar * at the same time that the usurping Chancellor was ordered to deliver up the Great Seal, they joined in saying that they could not do so without the consent of the Barons, by whom they had been appointed; but the King, with general approbation, dismissed him, and
July 1261. appointed Philip Basset Chief Justiciar in his stead.

Hugh le Despencer, maintaining that he had not been lawfully superseded, still claimed to be entitled to perform the functions of the office, and, the tide again turning in favour of the Barons, the King was obliged to recognise him
A.D. 1263. as Chief Justiciar. The following year, open hostilities being resumed, he placed himself at the head of a strong military force, destroyed the houses of Philip Basset and the loyalist nobles in Westminster, imprisoned the King's judges, even pillaged foreign merchants, and extorted large sums of money by cruelties on the Jews.

In the battle of Lewes our Chief Justiciar commanded one of the wings of the army, and with his own hand took prisoner Marmaduke de Twenge, whose ransom was fixed at 700 marks. Immediately after, no fewer than six strong castles were placed under his government, and he had a grant of 1000 marks for his better sustentation in the office of Chief Justiciar. He was likewise appointed one of the six commissioners to treat with the Pope's legate and the

* At this time the Chief Justiciar seems to have held in his hand certain parchment rolls as the emblem of his office: "Rex vocatis ad se Justiciario et Cancellario nuper institutis a Baronibus, sigillum suum sibi reddi, et *rotulos* de Justiciaria sibi mandavit restitui."—See Spel. 341.

King of France, as mediators relative to the reformation of the state. CHAP. I.

He continued to do the judicial business of the office regularly till again called into the field, to make head against the formidable force assembled under Prince Edward for the re-establishment of the royal authority. When the two armies came in sight of each other, near Evesham, the Earl of Leicester, in consideration of his age and infirmities, advised him to leave the field, but he refused to disgrace his ermine by such poltroonery; and the two were slain together, manfully making head against mighty odds, and refusing quarter which was offered to them. 4th Aug. 1265. Death of Hugh le Despencer.

Hugh le Despencer is to be considered the last of those remarkable men who, for above two centuries, exercised conjointly the functions now belonging to the first judge in the land and to the commander-in-chief of the forces. Such a combination (as was seen in the Roman republic) certainly has a powerful tendency to develop the highest faculties of the mind, and produces characters of greater eminence than are to be found when the sword and the gown are permanently disunited.

The son and grandson of the last of the Chief Justiciars acquired a most unenviable celebrity in the reign of Edward II.; but he is now honourably represented by the present Baroness le Despencer, and some of the most illustrious of the nobility of England are descended from him.

We need not be long delayed by Philip Basset, the rival Chief Justiciar. He was of the great family of that name which I have before mentioned, and which occurs much more frequently than any other name in our judicial annals. He began his political life in *opposition*, being associated with the Barons under De Montfort; but he soon went over to the Court, and became a special favourite of the feeble Henry. He was enriched by grants of various wardships, forfeitures, and shrievalties; was constituted governor of the castles of Oxford, Bristol, Corff, and Shireburn, and managed all the affairs of the King of the Romans. He had a very uneasy place as Chief Justiciar, but there was an interval while he enjoyed the title when he actually was Philip Basset Chief Justiciar. A.D. 1253. A.D. 1262.

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allowed to perform the duties of the office, and during a short absence of the King in Gascony he acted as Regent of the kingdom.* The royal cause declining, his house in Westminster was burned by his rival, and he was obliged to fly for safety. At the battle of Lewes he fought bravely in the royal cause, and he resisted the victorious rebels sword in hand, until he fell from loss of blood, when he was taken prisoner along with his Sovereign. He was then placed in Dover Castle, and kept a close prisoner there in the care of a younger son of the Earl of Leicester, till he was liberated on the final overthrow of that chieftain. It was generally thought that he would be restored to his office of Chief Justiciar; but the resolution had been taken to reform it, and, till this object should be fully accomplished, the more prudent course seemed to be to fill it with a man who was well acquainted with the administration of justice, and who never could be formidable as a military leader. However, the ex-Chief Justiciar continued to enjoy the royal favour.

April 1266. He was one of those appointed to carry into execution the "Dictum of Kenilworth," and he continued a member of the

His death. King's Council till his death. This must have happened in the autumn of 1271; for in the Fine Roll, under date 2d November, 56 Hen. III., there is an entry of an order for the constable of the Castle of Devizes to give it up to Elyas de Rabeyn, "because Philip Basset, his lord, is gone the way of all flesh."

He is reckoned by some antiquaries the last of the true Chief Justiciars, as they consider Hugh le Despencer an usurper of the office between the battle of Lewes and the battle of Evesham, and they hold that its character was entirely altered before the conclusion of this reign.†

Whether Simon de Montfort was ever Chief Justiciar?

I wish that I could have been justified in concluding the list of Chief Justiciars with Simon de Montfort himself: a life of him might be made most interesting and instructive, for not only did he achieve wonderful adventures by political

* Still he went through the routine business of his office, and all the mandates on the Fine Roll are signed by him. — *Rot. Fin.* ii. 278—385.

† Dugdale says, "Of those who had the office of Justiciarius Angliæ, Philip Basset was the last, the King's Bench and Common Pleas having afterwards one in each court."— *Or. Jur.* p. 20. : and see Spel. Gloss. p. 342.

intrigue and by military skill, and meet with striking vicissitudes of fortune, but he is to be honoured as the founder of a representative system of government in this country, and the chief framer of that combination of democracy with monarchy and aristocracy which has served as a model for all modern nations among whom freedom has flourished. I might make a pretence for an attempt to narrate his exploits and delineate his character, for he has been introduced among the Chief Justiciars; and three records are quoted, bearing date respectively 10th May, 7th June, and 8th June, 1265, in which the Earl of Leicester is styled "Justiciarius," which, possibly, might mean "Justiciarius Angliæ," the title by which Bigod, Le Despencer, and Basset were sometimes designated when they undoubtedly filled the highest office in the law. But an attentive examination of these records will show that he had only sat on a special commission: there is no proof that he ever was appointed to the office of Chief Justiciar, or acted in it; and there is no period to which his tenure of the office can be ascribed, except when, with his entire concurrence, it was filled by Hugh le Despencer, his partisan and dependant. When he called his famous parliament, with representatives from counties and boroughs to mingle in legislation with the hereditary nobility, he might easily have assumed the office of Chief Justiciar if he had been so inclined; but, on the contrary, he seems, with other constitutional improvements, to have meditated its abolition or reform, and there is great reason to believe that he suggested the new judicial system which was fully adopted and established in the succeeding reign, and under which justice is administered at this day in England.*

After the Barons had been effectually crushed, a partial trial of this system was made during the remainder of the life of the feeble Henry, with the sanction of his energetic son, who, before setting forth for Palestine, established a wise system of administration — a foretaste of his own happy reign. From the confusion introduced by the Barons' wars, and the con-

* Spelman, 342.; Brady's England, i. 650, 651.; Rot. Fin. ii. 405.; Leland's Coll. ii. 378.; Lives of Chancellors, i. ch. ix.

CHAP. I.

A.D. 1265 —1268.

Henry de Bracton Chief Justiciar.

sequent defective state of our records at that era, a doubt has been started whether the office of Chief Justiciar was filled up between the death of Hugh le Despencer in August, 1265, and March, 1268, when Robert de Brus was appointed to it. There is, however, strong reason to believe that in this interval it was held by Henry de Bracton, one of the greatest jurists who ever lived in any age or any country. He was, undoubtedly, a Justiciar at this time: in the commissions in which his name is mentioned no one had precedence of him; and we have the authority of Lord Ellesmere and others, who have carefully investigated the subject, for concluding that he was Chief Justiciar.

It would be a matter of the highest interest to know how a man so enlightened and accomplished was formed during the very darkest period of English history, when the civilisation introduced by the Normans seemed to be entirely obliterated, and when the amalgamation of races in this country had not yet begun to produce the native energy and refinement which afterwards sprang from it: but while we have the pedigree, at least up to the Conquest, and a minute account of the military exploits, of those who were employed in desolating the world, we have no information whatever of the origin, and very little of the career, of a man who explained to his savage countrymen the benefits to be derived from an equitable system of laws defining and protecting the rights of every class of the community, — who, drawing his sentiments from the rich fountain of Roman jurisprudence, expressed them in the Latin tongue with a purity seldom reached by the imitators of the Augustan age, and who was rivalled by no English juridical writer till Blackstone arose five centuries afterwards. He is said, on uncertain authority, to have studied at Oxford, and there to have obtained the degree of Doctor of both laws. We know that he had taken holy orders, for, by letters patent, granting to him a house during the minority of the heir, he is designated "dilectus *clericus* noster." He is supposed to have practised in the common law courts of Westminster, and he certainly must have had great practical experience in juridical procedure, as well as a profound scientific knowledge

of jurisprudence in all its departments. But we are not clearly informed of any part of his professional career till we find that, in the year 1245, he was appointed a Justice Itinerant for the counties of Nottingham and Derby, and in the following year for the northern counties. Such employment was compatible with his continuing to practise as a barrister during the terms, and his name does not appear in the Fine Rolls till four years later. He then certainly was a Justiciar or Judge of the Aula Regis, and so he continued for many years.* A.D. 1250.

The probability is, that he was promoted to be Chief Justiciar in 1265, soon after the battle of Evesham, and that he held the office till he died in the end of the year 1267. All notice of him in the Rolls then ceases, and we certainly know that another Chief Justiciar was appointed in the beginning of 1268. We have no information respecting his descendants, although the greatest nobles in England might have been proud to trace him in their line.

Bracton's book, "De Legibus et Consuetudinibus Angliæ."

His memory will be preserved as long as the law of England, by his work, "De Legibus et Consuetudinibus Angliæ." It must have been finished just about the time when he is supposed to have been Chief Justiciar, for it contains references to changes in the law introduced shortly before, and it takes no notice of the statute of Marlbridge, which passed in the 52nd year of Henry III. The chief defect imputed to the work is its frequent introduction of the Roman civil law; but this will be found to be by way of illustration, not as authority; and there seems great reason to regret that the prejudices of English lawyers in all ages have inclined them to confine their attention almost exclusively to the technicalities of their own peculiar code,—ever more distinguished for precision than for enlarged principles. The work we are considering certainly gives a complete view of the municipal law of England in all its titles as it stood when the author wrote; and for systematic arrangement, for

* He is sometimes named Bratton, and sometimes Bretton, in the Rolls; but these are distinctly proved to be the identical Henry de Bracton of whom we are treating.

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perspicuity, and for nervousness, it cannot be too much admired.*

First Chief Justice who acted merely as a judge. A.D. 1268.

I now come to a "CHIEF" who, we certainly know by existing records, was appointed "CAPITATIS JUSTICIARIUS AD PLACITA CORAM REGE TENENDA," the modern designation of the presiding Judge in the Court of King's Bench; and he is placed by Dugdale at the head of the new list, who have exercised merely judicial functions. However, there had been no law passed by the Legislature since MAGNA CHARTA to change our judicial system; and, although a separate tribunal now existed for civil suits, there is reason to think that the AULA REGIS continued till the accession of Edward I. without any farther statutable alteration, there being merely an *understanding* that the person who presided in it was no longer to interfere in military affairs or in the government of the kingdom, whether the sovereign was at home or abroad.

The choice made of a Chief, who was to be, like Bracton, a mere civilian, seems a curious one; for, instead of a lawyer, born in obscurity, who had pushed himself into notice by success in his profession, he was the head of a great Norman baronial house; he had in his veins the blood of the Kings of Scotland; he enjoyed large possessions in that kingdom; he was in the succession to a throne; he actually became a competitor for it; his grandson, after giving the English the severest defeat they ever sustained, swayed the sceptre with glory and felicity; and our gracious Queen, Victoria, in tracing her line to the Conqueror, and to Cerdic, counts this Chief Justiciar among her ancestors.

Lord Chief Justice Bruce.

Origin of the Bruces.

Robert de Brus, or Bruis (in modern times spelt *Bruce*), was one of the companions of the Conqueror; and having particularly distinguished himself in the battle of Hastings, his prowess was rewarded with no fewer than ninety-four lordships, of which Skelton, in Yorkshire, was the principal. The Norman knights, having conquered England by the sword, in the course of a few generations got possession of a great part of Scotland by marriage. They were far more refined and

* See Reeves's Hist. of Eng. Law, ii. 86. 281.; Lives of Chancellors, i. ch. ix.; 2 St. Tr. 693.; Rot. Cl. ii. 77.; Rot. Fin. 82—458.

accomplished than the Caledonian thanes; and, flocking to the court of the Scottish Kings, where they made themselves agreeable by their skill in the tournament, and in singing romances, they softened the hearts and won the hands of all the heiresses. Hence the Scottish nobility are almost all of Norman extraction; and most of the great families in that kingdom are to be traced to the union of a Celtic heiress with a Norman knight. Robert, the son of the first Robert de Brus, whom we have commemorated, having married early, and had a son, Adam, who continued the line of De Brus of Skelton, became a widower while still a young man, and, to assuage his grief, paid a visit to Alexander I., then King of Scots, who was keeping his court at Stirling. There the beautiful heiress of the immense lordship of Annandale, one of the most considerable fiefs held of the Crown, fell in love with him; and in due time he led her to the altar. A Scottish branch of the family of De Brus was thus founded under the designation of Lords of Annandale. The fourth in succession was "Robert the Noble," and he raised the family to much greater consequence by a royal alliance, for he married Isabel, the second daughter of Prince David, Earl of Huntingdon, grandson of David I., sometimes called St. David, and said to have been "a sore saint to the Crown," from the number of monasteries he had endowed from the royal domains.* Robert de Brus, the subject of this sketch, was their eldest son.

Scottish branch of the Bruces.

From the time of William the Conqueror and Malcolm Canmore, until the desolating wars occasioned by the dispute respecting the right of succession to the Scottish crown, England and Scotland were almost perpetually at peace; and there was a most familiar and friendly intercourse between the two kingdoms, insomuch that nobles often held possessions in both, and not unfrequently passed from the service of the one government into that of the other. Thus we account for the exact uniformity of the laws of the two nations, which is so great that Scottish antiquaries have con-

* Four of these are within a few miles from the spot where I am now writing —Jedburgh, Melrose, Dryburgh, and Kelso.

CHAP. I.

A.D. 1224 —1268.

tended that their code, entitled "Regiam Majestatem," was copied by the English; although there can be no reasonable doubt that the northern and more barbarous people were the borrowers.

Birth of the Chief Justice.

Our Robert, son of "Robert the Noble" and the Scottish Princess, was born at the Castle of Lochmaben, about the year 1224. The Skelton branch of the family still flourished, although it became extinct in the next generation by the death, without issue male, of Peter de Brus, the eighth in descent from Robert who fought at Hastings. At this time a close intercourse was kept up between "Robert the Noble" and his Yorkshire cousins; and he sent his heir to be educated in the south under their auspices. It is supposed that the youth studied at Oxford; but this fact does not rest on any certain authority. In 1245, his father died, and he succeeded to the lordship of Annandale. One would have expected that he would now have settled on his feudal principality, exercising the rights of *furca et fossa*; or "pit and gallows," which he possessed without any limit over his vassals; but by his English education he had become quite an Englishman, and, paying only very rare visits to Annandale, he sought preferment at the court of Henry III. What surprises us still more is, that he took to the gown, not the sword; and instead of being a great warrior, like his forefathers and his descendants, his ambition seems to have been to acquire the reputation of a great lawyer. There can be little doubt that he practised as an advocate in Westminster Hall from 1245 till 1250. In the latter year, we certainly know that he took his seat on the bench as a Puisne Judge, or Justiciar; and, from thence till 1263, extant records prove that payments were made for assizes to be taken before him, — that he acted with other Justiciars in the levying of fines, — and that he went circuits as senior judge of assize. In the 46th year of Henry III. he had a grant of 40*l.* a year salary, which one would have supposed could not have been a great object to the Lord of Annandale. In the Barons' wars, he was always true to the King; and, although he had no taste for the military art, he accompanied his royal master into the field, and was taken prisoner with him at the battle of Lewes.

He is educated in England.

He is a Puisne Judge.

He is taken prisoner in the battle of Lewes.

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The royal authority being re-established by the victory at Evesham, he resumed his functions as a Puisne Judge; and for two years more there are entries proving that he continued to act in that capacity. At last, on the 8th of March, 1268, 52 Henry III., he was appointed "Capitalis Justiciarius ad placita coram Rege tenenda." Unless his fees or presents were very high, he must have found the reward of his labours in his judicial dignity, for his salary was very small. Hugh Bigod and Hugh le Despencer had received 1000 marks a year "ad se sustentandum in officio Capitalis Justitiarii Angliæ," but Chief Justice de Brus was reduced to 100 marks a year. Such delight did he take in playing the Judge, that he quietly submitted both to loss of power and loss of profit.

A.D. 1268. He is made Chief Justice.

He remained Chief Justice till the conclusion of this reign, a period of four years and a half, during which he alternately went circuits and presided in Westminster Hall. None of his decisions have come down to us, and we are very imperfectly informed respecting the nature of the cases which came before him. The boundaries of jurisdiction between the Parliament, the Aula Regis, and the rising tribunal afterwards called the Court of King's Bench, seem to have been then very much undefined.

He loses the office on the death of Henry III.

On the demise of the Crown, Robert de Brus was desirous of being reappointed; but it was resolved to fill the office with a regularly trained lawyer, and there is reason to fear that he was not much better qualified for it than the military chiefs who had presided in the AULA REGIS before the common law of England was considered a science. He was so much mortified by being passed over, that he resolved to renounce England for ever; and he would not even wait to pay his duty to Edward I., now returning from the holy wars.

A.D. 1272.

The ex-Chief Justice posted off for his native country, and established himself in his castle of Lochmaben, where he amused himself by sitting in person in his court baron, and where all that he laid down was, no doubt, heard with reverence, however lightly his law might have been dealt with in Westminster Hall. Occasionally he paid visits to the court of his kinsman, Alexander III., but he does not appear to have

He returns to Scotland.

A.D. 1286.

CHAP. I.

taken any part in Scottish politics till the untimely death of that monarch, which, from a state of peace and prosperity, plunged the country into confusion and misery.

A.D. 1290.

There was now only the life of an infant female, residing in a distant land, between him and his plausible claim to the Scottish crown. He was nominated one of the negotiators for settling the marriage between her and the son of Edward I., which, if it had taken place, would have entirely changed the history of the island of Great Britain. From his intimate knowledge both of Scotland and England, it is probable that the "Articles" were chiefly of his framing, and it must be allowed that they are just and equitable. For his own interest, as well as for the independence of his native country, he took care to stipulate that, "failing Margaret and her issue, the kingdom of Scotland should return to the nearest heirs, to whom of right it ought to return, wholly, freely, absolutely, and without any subjection."*

He is a commissioner for negotiating the marriage of the Maid of Norway with the son of Edward I.

The Maid of Norway having died on her voyage home, the ex-Chief Justice immediately appeared at Perth with a formidable retinue, and was in hopes of being immediately crowned King at Scone;—and he had nearly accomplished his object, for John Baliol, his most formidable competitor in point of right, always feeble and remiss in action, was absent in England. But, from the vain wish to prevent future disputes by a solemn decision of the controversy after all parties should have been heard, the Scotch nobility in an evil hour agreed to refer it, according to the fashion of the age, to the arbitration of a neighbouring sovereign; and fixed upon Edward I. of England, their wily neighbour.

On her death he claims the crown of Scotland.

A.D. 1291.

It is a great reproach to the memory of the ex-Chief Justice that, at the famous meeting on the banks of the Tweed, when the English Chancellor, in the presence of the notables of both nations, asked him "whether he acknowledged Edward as Lord Paramount of Scotland, and whether he was willing to ask and receive judgment from him in that

He acknowledges Edward I. as Lord Paramount of Scotland.

* Some historians, both English and Scotch, have supposed that the Robert Bruce employed in this negotiation was the son of the Chief Justice who so romantically became Earl of Carrick, by being forced by the heiress of that great domain to marry her; but Lord Hales clearly proves that it was Robert the father.—See Dalrymple's Annals, i. 198. 204.

character, he expressly, definitively, and absolutely declared his assent." *

A.D. 1291.

He afterwards pleaded his own cause with great dexterity, and many supposed that he would succeed. Upon the doctrine of *representation*, which is familiar to us, Baliol seems clearly to have the better claim, as he was descended from the eldest daughter of the Earl of Huntingdon: but Bruce was one degree nearer the common stock; and this doctrine, which was not then firmly established, had never been applied to the descent of the crown. †

A.D. 1292. Decided against him.

When Edward I. determined in favour of Baliol, influenced probably less by the arguments in his favour than by the consideration that from the weakness of his character he was likely to be a more submissive vassal, Robert de Brus complained bitterly that he was wronged, and resolutely refused to acknowledge the title of his rival. He retired in disgust to his castle of Lochmaben, where he died in November, 1295, in the seventy-second year of his age.

His death.

His descendants.

While resident in England he had married Isabel, daughter of Gilbert de Clare, Earl of Gloucester, by whom he had several sons. Robert, the son of Robert the eldest, became Robert I., and one of the greatest of heroes. The descent of the crown through him to the Stuarts is, of course, universally known. The family of the Chief Justice is still kept up in the male line by the descendants of his younger son, John, among whom are numbered the Earl of Elgin, the Earl of Cardigan, and the Marquess of Aylesbury. ‡

* R. Fœd. vol. ii. 545.

† See Dalrymple's Annals, i. 215—243.

‡ See Dug. Chr. Ser. Rot. Fin. ii. 79. 545.; Dug. Bar. Coll. Peerage.

CHAPTER II.

THE LIVES OF THE CHIEF JUSTICES FROM THE ACCESSION OF EDWARD I. TO THE APPOINTMENT OF CHIEF JUSTICE TRESILIAN.

CHAP. II.

A.D. 1272.

WE now arrive at the æra when our judicial institutions were firmly established on the basis on which, with very little alteration, they have remained to the present day. Although the AULA REGIS had existed down to the conclusion of the reign of Henry III., and cases of peculiar importance or difficulty were decided before the Chief Justiciar, assisted by the great officers of state *, it had gradually ceased to be a court of original jurisdiction, and it had been separating into distinct tribunals to which different classes of causes were assigned. Edward I., our JUSTINIAN, now not only systematised and reformed the principles of English jurisprudence, but finally framed the courts for the administration of justice as they have subsisted for six centuries. "In his time the law did receive so sudden a perfection, that Sir Matthew Hale does not scruple to affirm that more was done in the first thirteen years of his reign to settle and establish the distributive justice of the kingdom, than in all the ages since that time put together." † The AULA REGIS he utterly abolished as a court of justice; and he decreed that there should no longer be a Justiciar with military and political as well as judicial functions. "The Court of our Lord the King before the

Judicial institutions of Edw. I.

* A remnant of the Aula Regis subsisted to our own time in the "Exchequer Chamber" into which cases of great importance and difficulty continued to be adjourned, to be argued before all the judges. The practice of judges reserving points of criminal law arising before them on the circuit, I consider as having had a similar origin. The rule which prevailed—that both in civil and criminal cases the opinions of the majority of the judges in the Exchequer Chamber should over-rule the opinions of the majority of the judges of the court in which the cases originated, and in which formal judgment was to be given—admits of no other solution.

† 4 Bl. Com. 425.; Hale's Hist. C. L. p. 162.

King himself," or "Court of King's Bench," was constituted. Here the King was supposed personally to preside, assisted by the first common law judge, denominated "Chief Justice, assigned to hold pleas in the Court of our Lord the King before the King himself," and by other justices or "puisne judges." This was the supreme court of criminal jurisdiction, and was invested with a general superintendence over inferior tribunals. MAGNA CHARTA had enacted that civil actions should be tried before judges always sitting in the same place, so that the suitors might not be compelled to follow the King in his migrations to the different cities in his dominions; and the section of the AULA REGIS which had subsequently sat at Westminster now became the "Court of Common Pleas," having a Chief Justice and Puisnies, with an exclusive jurisdiction which it still preserves over "real actions,"—although, by ingenious fictions, other courts stripped it of much of its business in the trial of "personal actions." The management of the estates and revenues of the Crown had been early intrusted to certain members of the AULA REGIS, who were called "Barons of the Exchequer." They now formed an entirely separate tribunal called the "Court of Exchequer," with the Lord Treasurer and the Chancellor of the Exchequer to preside over them — being in strictness confined merely to fiscal matters in which the Crown was concerned, but gradually usurping both legal and equitable jurisdiction between subject and subject, by countenancing the fiction that the suitors were the King's debtors, or the King's accountants. The Chancellor, from being the sixth in precedence of the great officers of state, was now advanced to be the first, and he was intrusted with the power of doing justice to the subject where no remedy was provided by the common law. The appellate jurisdiction of the AULA REGIS was vested in the great council of the nation now called the Parliament, and, on the division of the legislature into two chambers which soon followed, remained with the Lords Spiritual and Temporal, who had the Judges as their assessors.

Ralph de Hengham Chief Jus-

All juridical knowledge was long monopolised by the clergy; but while the civil and common law continued to be

CHAP. II.

cultivated by them exclusively, a school of municipal or common law had been established for laymen, who gradually formed themselves into societies called "Inns of Court," devoting their lives to legal pursuits. From the body of professional men thus trained, Edward resolved to select his Judges; and he appointed RALPH DE HENGHAM Chief Justice of the King's Bench, and THOMAS DE WEYLAND Chief Justice of the Common Pleas, allowing them a salary of only sixty marks a year, but adding a small pittance to purchase robes, and stimulating their industry by fees on the causes they tried.

tice of the Court of King's Bench.

A.D. 1278.

His origin.

The De Henghams had long been settled at Thetford in Norfolk; and the head of the family, towards the end of the reign of Henry III., had gained distinction as a knight in several passages of arms, had been a Judge in the AULA REGIS, and had acted as a Justice in Eyre. Ralph, a younger son of his, having a greater taste for law than for military exercises, was, while yet a boy, placed in the office of a prothonotary in London, and not only made himself master of the procedure of the courts, but took delight in perusing Glanville, Bracton, and Fleta, which, in those simple and happy times, composed a complete law library. Without the clerical tonsure, he became a candidate for business at the bar; but such was the belief, that the characters of *causidicus* and *clericus* must be united, that, to further his success, he was obliged to take holy orders, and he was made a canon of St. Paul's.* His reputation in Westminster Hall was now greater than that of any man of his time; and while he was little more than thirty years of age, on the principle of *detur digniori* he was made Chief Justice of the Court of King's Bench, and received the honour of knighthood.

His progress in the law.

Law books composed by him.

He fully answered the expectation which had been formed of him for industry, learning, and ability. His great object was to establish a regular *procedure* in his court calculated to expedite suits and to prevent fraud. He began with publishing a collection of writs which he had carefully made

* It was to conceal the want of clerical tonsure, that the serjeants-at-law, who soon monopolised the practice of the Court of Common Pleas, adopted the *coif*, or black velvet cap, which became the badge of their order.

CHAP. II.

A.D. 1278 —1286.

and revised, known by the name of REGISTRUM BREVIUM, and pronounced by Lord Coke to be "the most ancient book on the law." * Next, he composed an original work, which is still extant, and quoted in Westminster Hall as the "Summæ of Lord Chief Justice Hengham." It is written in Latin, and divided into two books, called "Hengham Magna" and "Hengham Parva," giving instructions with regard to the mode of conducting actions, particularly writs of right, of dower, and of assize, from the *præcipe* to the *execution* of the judgment. It continued in MS. till the reign of James I., when it was printed and published with the following title-page: —

"RADULPHI
de
HENGHAM
EDWARDI Regis I.
Capitalis olim Justitiarii
SUMMÆ,
Magna Hengham et Parva vulgo
nuncupatæ, nunc primum ex vet. Codd.
MSS. lucem prodeunt.
LONDINI.
Bibliopolarum Corpori excuditur.
M.DC.XVI."

The Latinity is barbarous even for a lawyer, and the arrangement not very good. From a quaint analogy to the Mosaic account of the creation, he supposes the work of conducting a suit to be divided into six days; and he describes what is to be done each day — in "casting an essoin," "demanding a view," &c.† But it may be considered as creating order out of chaos in the legal world, and, with all its faults, it must have been of essential service to those who were to practise before the learned author.

He gave much satisfaction by his despatch of judicial business. The Judges of the King's Bench still travelled

* 4 Inst. 140.; 3 Rep. Preface, vii. He means, of permanent authority in the common law; which earlier treatises could not be considered.

† I give a specimen: —

"SECUNDUS DIES. Secundo die placiti potest reus facere defaltam si velit ex consuetudine regni, dum tamen essoniatus fuerit primo die ordine præmonstato. Petens autem expectans quartam diem ipso die offerat se liti sic versus ipsum reum in hæc verba: 'Rehardus le Jay se profre vers William Huse de play de terre,'" &c. — *Hengham Magna*, ch. viii.

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about with the Sovereign, and mounted their tribunal wherever he might be. Thus Chief Justice Hengham led a wandering life, and was stationed from time to time at Winchester, Gloucester, York, and other cities. He was summoned to the parliament held at Shrewsbury, and joined in the inhuman sentence by which the Prince of Wales was condemned to die as a traitor for gallantly defending the independence of his country.*

A.D. 1286.

The conquest and settlement of Wales being completed, Edward went abroad in order to make peace between Alphonso, King of Aragon, and Philip the Fair, who had lately succeeded Philip the Hardy on the throne of France. In such favour was Chief Justice de Hengham, that he was appointed Guardian of the kingdom, although this trust no longer was attached to his office;—the King declaring, like the Duke of Vienna,—

He is appointed Guardian of the kingdom.

> . . . "You must know we have with special soul
> Elected him our absence to supply;
> Lent him our terror, drest him with our love,
> And given his deputation all the organs
> Of our own power."

The courtiers probably replied,—

> "If any in all England be of worth
> To undergo such ample grace and honour,
> It is *De Hengham.*"

Yet he was supposed to have misconducted himself almost as much as "Lord Chief Justice Angelo."

A.D. 1289.

The King remained in Aquitaine nearly three years, and at last coming home rather unexpectedly, though not in disguise, found many disorders to have prevailed, both from open violence and from the corruption of justice. Tumults had broken out in many parts of England (it was said) from the rapacity of De Hengham; and robberies on the highways had become so frequent, that no one could travel from town to town without a strong escort. What was worse, it was alleged that the Lord Chief Justice, instead of vigorously and impartially enforcing the law, had himself taken bribes,

He is charged with bribery.

* Rot. Parl. 6 Ed. I.

and had connived at a wholesale trade in bribery carried on by his brother Judges.

The King, without inquiry, threw them all into prison, and summoned a parliament, before which they might be brought to trial. The kingdom was certainly found in a very disturbed state, but no specific act of misgovernment could be fastened on De Hengham. He and most of the other Judges, however, had taken money from the suitors, which was considered evidence of judicial corruption. They were put to answer at the bar of the House of Lords, and many witnesses were examined against them. All except two, John de Matingham and Elias de Beckingham, were found guilty, dismissed from their offices, and heavily fined. To disgrace them still more, their successors were required to swear, when entering on office, "that they would take no bribe, nor money, nor gift of any kind, from such persons as had suits depending before them, — except a breakfast." *

Convictions of the Judges.

De Hengham was fined 7000 marks, and for some time laboured under deep disgrace.† But the evidence against him is not preserved, and there is reason to think that he suffered unjustly from popular prejudice and royal precipitancy. The salary allowed to him was so exceedingly small, that he could not subsist without fees, and, the amount of these not always being well defined, the taking of them was liable to be misconstrued into extortion or bribery. In after-times the current of public opinion ran strongly in his

De Hengham is fined 7000 marks.

Opinions respecting him

* 1 Parl. Hist. 38.

† Tyrrell, in his History, sets down the fines as follows: —

"Sir Ralph de Hengham, C. J.	7000 marks	
Sir John Loveton	3000 "	
Sir William Brompton	3000 "	
Sir Solomon Rochester	4000 "	Justice of Assize.
Sir Richard Boyland	4000 "	Justices Itinerant.
Sir Thomas Soddington	2000 "	Justices Itinerant.
Sir Walter Hopton	2000 "	Justices Itinerant.
Sir William Saham	3000 "	
Robert Lithbury	1000 "	Master of the Rolls.
Roger Leicester	1000 "	
Henry Bray	1000 "	Escheator and Judge for the Jews.

And, what is more remarkable, Adam de Stratton, a certain Clerk of the Court, was fined no less than 32,000 marks of new money, besides jewels and silver plate."

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favour; and in Richard III.'s reign it was said "the only crime proved against him was, that, out of mere compassion, he had reduced a fine which he had set upon a poor man from 13*s.* 4*d.* to 6*s.* 8*d.*" * The tradition prevailing in the reign of Elizabeth was, that from the fine upon the Chief Justice himself a clock-house was built at Westminster, furnished with a clock to be heard in Westminster Hall.† Upon this story, however, Blackstone remarks, "that (whatever instances may be found of the private exertion of mechanical genius in constructing horological machines) clocks came not into common use till an hundred years afterwards, about the end of the 14th century." ‡

in after-times.

The ex-Chief Justice bore his misfortunes with magnanimity, and gradually recovered the confidence both of the King and of the public. About eleven years afterwards we find him one of the Justices in Eyre for the general perambulation of the forests § ; and near the conclusion of this reign he was employed to negotiate a treaty with the Scots, the King having failed in all his attempts to rob them of their independence. ‖

A.D. 1300.

A.D. 1305.

He is restored to public employment. 8th July, 1307.

At the accession of Edward II., De Hengham was again actually replaced on the Bench, being appointed Chief Justice of the Court of Common Pleas ¶; and he continued to fill this office with much credit till his death in the end of the following year. He was buried in St. Paul's Cathedral, where a marble monument was erected to his memory with the following rhyming epitaph: —

His death. A.D. 1308.

* Year-Book, M. 2 Richard III. 10.

† 3 Inst. 72.; 4 Inst. 255.

‡ Comm. vol. iii. 410. Lord Coke was more credulous, and thus palavers in his 4th Institute (f. 255.): —"Radulphûs de Ingham, Chief Justice of England, a very poor man being fined before him at 13*s.* 4*d.*, in another tearm, moved with pity, caused the record to be rased and made 6*s.* 8*d.*; for which he (for his fine) made the clock (to be heard into Westminster Hall) and the clock-house in Westminster, which cost him 800 marks, and continueth unto this day, which sum was entered into the roll. And almost in the like case in the reign of Queen Elizabeth, Sir Robert Catlyn, Chief Justice of England, would have had Justice Southcote (one of his companions, justice of the King's Bench) to have altered a record, which the justice denyed to doe, and said openly in court 'that he meant not to build a clock house.'" See 3 Pryn. Rec. 401, 402.; Dugd. Chron. Ser. 26.; 1 Hale, P. C. 646, 647.

§ Rot. in Furr. Lond., 29 Ed. I. m. 8.

‖ 1 Rot. Parl., 33 Ed. I.

¶ Dugd. Chron. Ser. 34.

" Per versus patet hos, Anglorũ qd jacet hic flos;
Legum qui tuta dictavit vera statuta,
Ex Hengha dict' Radulph' vir benedict'."

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He may be truly considered the father of the Common Law Judges. He was the first of them who never put on a coat of mail; and he has had a long line of illustrious successors contented with the ermined robe.

De Weyland Chief Justice of the Common Pleas.

Of the contemporary Judge, DE WEYLAND, I find nothing related prior to his appointment of Chief Justice of the Common Pleas. He likewise was esteemed a great lawyer, and he long gave high satisfaction as a magistrate. He several times acted as Justice Itinerant, and was zealous in detecting and punishing criminals.* But unfortunately, his salary being only sixty marks a year, he seems without scruple to have resorted to very irregular courses for the purpose of increasing his riches.

His conduct.

A.D. 1289.

When arrested, on the King's return from Aquitaine, conscious of his guilt, he contrived to escape from custody, and, disguising himself in the habit of a monk, he was admitted among friars-minors in a convent at Bury St. Edmund's. However, being considered a heinous offender, sharp pursuit was made after him, and he was discovered wearing a cowl and a serge jerkin. According to the law of sanctuary, then prevailing, he was allowed to remain forty days unmolested. At the end of that time the convent was surrounded by a military force, and the entry of provisions into it was prohibited. Still it would have been deemed sacrilegious to take him from his asylum by violence; but the Lord Chief Justice preferred surrendering himself to perishing from want.† He was immediately conducted to the Tower of London. Rather than stand a trial, he petitioned for leave to abjure the realm; this favour was granted to him on condition that he should be attainted, and forfeit all his lands and chattels to the Crown.‡ Having walked barefoot and bareheaded, with a

He absconds in disgrace.

* Madd. Exch. ii. 66. c. 1. k.

† One account says, "He took upon him the habit of a grey friar, but, being discovered by some of his servants, he was watched and guarded, and, after two months' siege, went out, forsaking his friar's coole, and was taken and sent to the Tower."—See 4 *Bloomfield's Norfolk*, 631.

‡ The property forfeited by him was said to have been worth upwards of

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crucifix in his hand, to the sea-side at Dover, he was put on board a ship and deported to foreign parts. He is said to have died in exile, and he left a name often quoted as a reproach to the Bench till he was superseded by Jeffreys and Scroggs.*

His punishment and infamy in after-times.

The immediate successor of De Hengham as Chief Justice of the King's Bench was GILBERT DE THORNTON, who, I make no doubt, was a worthy man, but who could not have been very distinguished, for all that I can find respecting him is that he was allowed a salary of 40*l.* a year.† He was overshadowed, as sometimes happens, by a puisne who sat by him, and who at last supplanted him. This was ROGER LE BRABAÇON‡, who, from the part he took in settling the disputed claim to the crown of Scotland, is an historical character. His ancestor, celebrated as "the great warrior," had accompanied the Conqueror in the invasion of England, and was chief of one of those bands of mercenary soldiers then well known in Europe under the names (for what reason, historians are not agreed) of Routiers, Cottereaux, or

De Thornton Chief Justice of King's Bench. A.D. 1289.

Roger le Brabaçon.

100,000 marks, or 70,000*l.*, "an incredible sum," says Blackstone, "in those days, before paper credit was in use, and when the annual salary of a Chief Justice was only sixty marks."—*Com.* iii. 410.

* Oliver St. John, in his speech in the Long Parliament against the Judges who decided in favour of ship-money, compares them with the worst of their predecessors:—"Weyland, Chief Justice of the Common Pleas in the time of Edward I., was attainted of felony for taking bribes, and his lands and goods forfeited, as appears in the Pleas of Parliament, 18 Ed. I., and he was banished the kingdom as unworthy to live in that state against which he had so much offended."

Lingard says that "Weyland was found guilty of having first instigated his servants to commit murder, and then screened them from punishment" (vol. iii. 270.); but he cites no authority to support so serious a charge: and the historian on this occasion does not display his usual accuracy, as he makes Weyland Chief Justice of the King's Bench, elevating De Hengham at the same time to the office of "Grand Justiciary."

In a MS. chronicle in the Bodleian Library, cited by Dugdale (Chron. Ser. 1288.), there is this entry: "Tho. de Weyland, *eo quod malè tractavit populum*, ab officio Justiciarii amotus, exhæredatus, et a terra exulatus."

Speed gives a melancholy account of the sufferings of the English, at this time, between the Jews and the Judges. "While the Jews by their cruel usuries had one way eaten up the people, the Justiciars, like another kind of Jews, had ruined them with delay in their suits, and enriched themselves with wicked convictions." He then relates with great glee "how Sir Thomas Weyland, being stripped of all his lands, goods, and jewels, which he had so wickedly got, was banished like the felons he had tried."—*Hist. of G. B.* p. 558.

† "Gilbertus de Thornton, capitalis Justic. habet XL*l.* per annum, ad se sustentandum."—Lib. 18 Ed. I. m. 1.

‡ The name is sometimes spelt Brabaçon, Brabançon, Brabason, and Brabanson.

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A.D. 1291.

*Brabançons.** Being rewarded with large possessions in the counties of Surrey and Leicester, he founded a family which flourished several centuries in England, and is now represented in the male line by an Irish peer, the tenth Earl of Meath. The subject of the present sketch, fifth in descent from "the great warrior," changed the military ardour of his race for a desire to gain distinction as a lawyer. He was regularly trained in all the learning of "Essoins" and "Assizes," and he had extensive practice as an advocate under Lord Chief Justice de Hengham. On the sweeping removal of almost all the Judges in the year 1190, he was knighted, and appointed a Puisne Justice of the King's Bench, with a salary — which one would have thought must have been a very small addition to the profits of his hereditary estates — of 33*l.* 6*s.* 8*d.* a year.† He proved a most admirable Judge; and, in addition to his professional knowledge, being well versed in historical lore, he was frequently referred to by the Government when negotiations were going on with foreign states.

He is employed by Ed. I. in the dispute about the crown of Scotland.

Edward I., arbitrator by mutual consent between the aspirants to the crown of Scotland, resolved to set up a claim for himself as liege lord of that kingdom, and Brabaçon was employed, by searching ancient records, to find out any plausible grounds on which the claim could be supported. He accordingly travelled diligently both through the Saxon and Norman period, and — by making the most of military advantages obtained by Kings of England over Kings of Scotland, by misrepresenting the nature of homage which the latter had paid to the former for possessions held by them in England, and by blazoning the acknowledgment of feudal subjection extorted by Henry II. from William the Lion when that prince was in captivity, without mentioning the

* Hume, who designates them "desperate ruffians," says, "Troops of them were sometimes enlisted in the service of one prince or baron, sometimes in that of another; they often acted in an independent manner, and under leaders of their own. The greatest monarchs were not ashamed, on occasion, to have recourse to their assistance; and as their habits of war and depredation had given them experience, hardiness, and courage, they generally composed the most formidable part of those armies which decided the political quarrels of princes." —Vol. i. 438.

† Dug Chr. Ser. A.D. 1290.

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A.D. 1291.

express renunciation of it by Richard I.—he made out a case which gave high delight to the English Court. Edward immediately summoned a parliament to meet at Norham, on the south bank of the Tweed, marched thither at the head of a considerable military force, and carried Mr. Justice Brabaçon along with him as the exponent and defender of his new *suzeraineté*. The Scottish nobles being induced to cross the river and to assemble in the presence of Edward, under pretence that he was to act only as arbitrator, Sir Roger by his order addressed them in French (the language then spoken by the upper classes both in Scotland and England), disclosing the alarming pretensions about to be set up. The following is said to be the substance of this speech: —

11th May.

His address to the Scottish Parliament.

"Lords, Thanes, and Knights of Scotland, — The reason of our supreme Lord coming here, and of your being summoned together, is, that he, in his fatherly kindness for all in any way depending upon him, taking notice of the confusion in which your nation has been since the death of Alexander your last King, and from the affection he bears for that kingdom, and all the inhabitants thereof, whose protection is well known to belong to him, has resolved, for the more effectually doing right to all who claim the kingdom, and for the preservation of the peace thereof, to show you his *superiority* and *direct dominion* * over the same out of divers chronicles and ancient muniments preserved in several monasteries in England."

He then appears to have entered into his proofs; and he thus concluded: —

"The mighty Edward, to whom you have appealed, will do justice to all without any usurpation or diminution of your liberties; but he demands your assent to, and recognition of, his said *superiority* and *direct dominion*."

A public notary and witnesses were in attendance, and in their presence the assumed vassals were formally called upon to do homage to Edward as their *suzerain*, of which a record was to be made for a lasting memorial. The Scots saw too late the imprudence of which they had been guilty in choosing such a crafty and powerful arbitrator. For the present they

* Here is the well-known feudal distinction between the *dominium directum*, which belongs to the lord, and the *dominium utile*, which belongs to the feudatory.

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refused the required recognition, saying that "they must have time for deliberation, and to consult the absent members of their different orders." Brabaçon, after advising with the King, consented that they should have time until the following day, and no longer. They insisted on further delay, and showed such a determined spirit of resistance, that their request was granted; and the 1st day of June following was fixed for the ceremony of the recognition. Brabaçon allowed them to depart; and a copy of his paper, containing the proofs of the alleged *superiority* and *direct dominion* of the English Kings over Scotland, was put into their hands. He then returned to the south, where his presence was required to assist in the administration of justice, leaving the Chancellor Burnel to complete the transaction. Although the body of the Scottish nobles, as well as the body of the Scottish people, would resolutely have withstood the demand, the competitors for the throne, in the hopes of gaining Edward's favour, successively acknowledged him as their liege lord, and their example was followed by almost the whole of those who then constituted the Scottish Parliament. But this national disgrace was effaced by the glorious exploits of Wallace and Bruce; and Brabaçon lived to see the fugitives from Bannockburn, and to hear from them of the saddest overthrow ever sustained by England since Harold and his brave army were mowed down at Hastings.

A.D. 1293.

He assists in subjecting Scotland to English jurisdiction.

When judgment had been given in favour of Baliol, Brabaçon was still employed to assist in the plan which had been formed to bring Scotland into entire subjection. There being a meeting at Newcastle of the nobles of the two nations, when the feudatory King did homage to his liege lord, complaint was made by Roger Bartholomew, a burgess of Berwick, that certain English judges had been deputed to exercise jurisdiction on the north bank of the Tweed. Edward referred the matter to Brabaçon and other commissioners, commanding them to do justice according to the laws and customs of his kingdom. A petition was then presented to them on behalf of the King of Scotland, setting forth Edward's promise to observe the laws and customs of that

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kingdom, and that pleas of things done there should not be drawn to examination elsewhere. Brabaçon is reported thus to have answered: —

A.D. 1293.

"This petition is unnecessary, and not to the purpose; for it is manifest, and ought to be admitted by all the prelates and barons, and commonalty of Scotland, that the King, our master, has performed all his promises to them. As to the conduct of his Judges, lately deputed by him as SUPERIOR and DIRECT LORD of that kingdom, they only represent his person; he will take care that they do not transgress his authority, and on appeal to him he will see that right is done. If the King had made any temporary promises when the Scottish throne was vacant, in derogation of his just *suzeraineté*, by such promises he would not have been restrained or bound."

Encouraged by this language, Macduff, the Earl of Fife, entered an appeal in the English House of Lords against the King of Scotland; and, on the advice of Brabaçon and the other Judges, it was resolved that the respondent must stand at the bar as a vassal, and that, for his contumacy, three of his principal castles should be seised into the King's hands.*

Although historians who mention these events designate Brabaçon as "Grand Justiciary," it is quite certain that, as yet, he was merely a Puisne Judge; but there was a strong desire to reward him for his services, and, at last, an opportune vacancy arising, he was created Chief Justice of the King's Bench.

A.D. 1296. He is made Chief Justice of the King's Bench.

Of his performances in this capacity we know nothing, except by the general commendation of chroniclers; for the Year-Books, giving a regular account of judicial decisions, do not begin till the following reign. The Court of King's Bench, still following the person of the sovereign, was, on one occasion, in Brabaçon's time, held in Roxburgh Castle, then in the possession of the English; but we have no report of any of the proceedings which came before it.†

He was still employed in a political capacity; and in the parliament held at Lincoln in the year 1301, he thus declared the reasons for calling it, and pressed for a supply: —

* Rym. ii. 605. 615. 635. Rot. Scot. i. 11. 16.
† Hale, Hist. C. L. 200.

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"My lords, knights, citizens, and burgesses: The King has ordered me to let you understand that whatever he hath done in his late wars hath been carried on by your joint consent and allowance. But of late time, by reason of the sudden incursion of the Scots and the malicious contrivance of the French, his Highness has been put to such extraordinary expenses, that, being quite destitute of money, he therefore desires a pecuniary aid from you; and trusts that you will not offer him less than one fifteenth of your temporal estates."

A.D. 1301. His speech at the opening of the English parliament.

"Hereupon," says the reporter, "the nobility and commons began to murmur *, and complained grievously against the King's menial servants and officers for several violent depredations and extortions." However, the wily Chief Justice soothed them by making the King go through the ceremony of confirming the Great Charter and the Charter of Forests, and he obtained the supply he had asked for.† — We read nothing more that is very memorable of him during the present reign.‡

On the accession of Edward II. Brabaçon was reappointed Chief Justice of the King's Bench §, and he continued very creditably to fill the office for eight years longer. He was fated to deplore the fruitless result of all his efforts to reduce Scotland to the English yoke, — Robert Bruce being now the independent sovereign of that kingdom, after humbling the pride of English chivalry.

8th July, 1307.

At last, the infirmities of age unfitting Brabaçon for the discharge of his judicial duties, he resigned his gown; but, to do him honour, he was sworn a member of the Privy Council, and he continued to be treated with the highest respect by all ranks till his death, which happened about two years afterwards.—He was married to Beatrice, daughter of John de Sproxton, but had by her only one child, a son, who died an infant. The Earls of Meath are descended from his brother Matthew. ‖

A.D. 1316.

His death.

* We are not told whether they exclaimed "oh! oh!" or what was the prevailing fashion of interjectional dissent. For centuries after, parliamentary cheering was not by "hear! hear!" but by "amen! amen!"

† 1 Parl. Hist. 46.

‡ See 3 Tyrrell, 18.

§ He was sworn in before Walter Reginald, the Deputy Treasurer. — Dug. Chr. Ser.

‖ His descendant, Sir William le Brabaçon, was Vice-Treasurer of Ireland,

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Collins, in his "Peerage," which, generally speaking, is a book of authority, here introduces Sir William Howard as "Chief Justice of England." Although he is so described under his portrait in the window of the church at Long Melford, in Suffolk *, I doubt whether he ever reached this dignity; but, for the honour of the law, I cannot refuse to introduce him from whom flowed all the blood of all the Howards.

Sir William Howard, qu. whether a Chief Justice?

The name was originally spelt Haward, and must have been of Saxon origin. His pedigree does not extend higher than his grandfather, who was a private gentleman, of small estate, near Lynn, in Norfolk. His father likewise was contented to lead a quiet life in the country,—intermarrying with the daughter of a respectable neighbour, and neither increasing nor diminishing his patrimonial property. But young William, hearing of the great fame and riches acquired by De Hengham and other lawyers, early felt an ambition to be inscribed in their order, and was sent to study the law in
A.D. 1293. London. There is no certain account of his success at the bar, but we know that in the 21st Edward I. he was assigned, with seven others, to take the assizes throughout the realm, in aid of the Justices of both benches. The district to which he was appointed comprehended the counties which now constitute the Northern circuit (except Durham), with Notting-
A.D. 1297. ham and Derby, now belonging to the Midland. Four years after, he was appointed one of the Judges of the Common Pleas; and on the accession of Edward II. he was again sworn into the same office.† Our judicial records do not mention any higher distinction acquired by him; and I suspect that the chiefship was only conferred upon him by flatterers of his descendants when they were rising to greatness. Nevertheless, he was certainly a very able and upright magistrate; and, from his profits as a barrister, and his official fees, (his salary was little more than 30*l.* a year,) he bought

and died in 1552. An Irish earldom was conferred on the family in 1627, and in 1831 the present Earl was created a peer of the United Kingdom by the title of Baron Chaworth.—See Grandeur of the Law, p. 182.

* He appears there in his judge's robes, with these words, in ancient black-letter characters: "Pray for the good state of William Haward, Chef Justis of England."—*Dug. Or. Jur.* p. 100.

† Dugd. Chron. Ser.

large possessions at Terrington, Wiggenhall, East Winch, and Melford, in Suffolk. These were long the principal inheritance of the Howards, who, for several generations, did not rise higher than being gentlemen of the bedchamber, sheriffs of Norfolk and Suffolk, governors of Norwich Castle, and commissioners of array,—without being ennobled. At last, Sir Robert Howard, descended from the Judge's eldest son, married the heiress of Thomas Mowbray, Duke of Norfolk; and Richard III. conferred on John, the son of this marriage, (the famous "Jockey of Norfolk," who fought and fell at Bosworth,) the dukedom still enjoyed, after repeated attainders, by the eldest representative of the family; while many earldoms and baronies have been conferred on its junior branches.

The next authentic Chief Justice of the King's Bench was Henry le Scrope, the first who, by success in the law, founded a family, and was himself ennobled. Many of ancient lineage, like the Grand Justiciars, had held judicial offices; and several, like Sir William Howard, raised themselves to eminence, and left descendants afterwards enrolled in the peerage. Henry le Scrope, of an obscure origin, from eminence in the legal profession sat in the House of Lords as a Baron; and great chancellors and warriors were proud to trace him in their pedigree. He was the son of William le Scrope, a small 'squire, who lived at Bolton, in Yorkshire. Having studied at Oxford, he was transplanted, when very young, to London, to study the law in one of the societies then forming, which were afterwards denominated "Inns of Court." He was much distinguished for industry and ability, and, in the end of the reign of Edward I., gained great wealth and reputation as an advocate. In the second year of Edward II., he was made a Puisne Judge of the Common Pleas; and at the end of six years, while he still continued in the same office, he was summoned to parliament not merely to *advise*, like the other judges, but to *assent* to, the measures to be brought forward. It is a curious circumstance, that, although he took his seat as a member of the House,

Henry le Scrope.

A.D. 1313. Summoned to the House of Lords.

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he did not receive a similar summons to any subsequent parliament.*

A.D. 1316. Chief Justice of the King's Bench.

A.D. 1330.

Two years afterwards, he was made Chief Justice of the King's Bench; and he held the office, with high reputation, for ten years, when he was removed from it in the convulsions which marked the conclusion of this reign. But he was restored to the bench when Edward III. had established his authority, as sovereign, by putting down his mother and her paramour; and he died in 1336, full of days and of honours.

From him were descended the Lords Scrope of Bolton; and his younger son, after being a great warrior, becoming Lord Chancellor, established another branch of this illustrious house. †

Henry de Staunton Chief Justice of the King's Bench.

On his first removal he was succeeded by Henry de Staunton, who filled a greater variety of judicial offices than any lawyer I read of in the annals of Westminster Hall. This extraordinary man was a younger brother of a respectable family that had long been seated in the county of Nottingham. He seems, when quite a boy, to have conceived a passion for the law; and, to gratify him, he was sent to an inn of court, without having been at any university. His steadiness in juridical studies was equal to his ardour; and, while yet a young man, having served his "apprenticeship" with great credit, he reached the dignity of serjeant, and was in great and profitable practice in all the courts. For nine years he was a Puisne Judge of the Common Pleas — from 1306 to 1315. He was then transferred to the Exchequer, being first a Puisne Baron, and then Chancellor of the Exchequer.

1st June, 1323.

On the 1st of June, 1323, he was made Chief Justice of the King's Bench, retaining his former place, which he was to execute by deputy. In a few months, however, he ceased to be a pluralist, and the Chancellorship of the Exchequer was given to the Bishop of Exeter. ‡

* The doctrine that "summons and sitting constitute an hereditary peerage," is now fully established, and has often been acted upon; but in early times the King seems to have exercised the prerogative of summoning any knight to sit in the House of Lords for a single parliament, without incurring the obligation of again summoning him, or of summoning his descendants after his death.

† See Lives of the Chancellors, vol. i. ch. xvi.; Dugd. Bar. and Ch. Ser.

‡ "Rex omnibus ad quos, &c. Sciatis quod cum dilectus Clericus et fidelis

De Staunton remained Chief Justice of the King's Bench little more than a year, when he was made Chief Justice of the Common Pleas, which was the more profitable, and for several centuries afterwards was reckoned the more eligible, appointment.* Finally, he concluded his career as Lord Chief Baron of the Exchequer — an office which I think he must have accepted as an honourable retreat in his old age, as, although attended with little labour, it has always been the lowest chiefship, both in emolument and rank. This he held till his death.†

He left no descendants; and, having felt the want of early education, he bequeathed his fortune to the foundation of a college in the University of Cambridge.

The following metrical history of him is given by the poet Robert Cade‡,—duly celebrating his early legal proficiency, but unaccountably omitting his highest official preferments: —

Ballad on Chief Justice Staunton.

"Sir William Staunton, Knight, was next,
Dame Athelin was his wife,
Sir Geoffrey Staunton, Knight, their heire,
Both voide of vice and strife.

noster *Henricus* de Staunton Cancellarii Scaccarii nostri de mandato nostro intendat officio Capitalis Justiciarii nostri ad placita coram nobis tenenda per quod dicto officio Cancellarii ad præsens intendere non potest Custodiam Sigilli nostri Scaccarii prædicti Venerabili Patri W. Exoniensi Episcopo Thesaurario nostro commisimus," &c. "Teste Rege apud Skergill xxvij die Septembris. Per breve de privato Sigillo."— Pat. 17. Ed. 2. p. 1. m. 9., et iterum, m. 16.

"Dominus Rex mandavit W. Exoniensi Episcopo Thesaurario per breve suum de privato sigillo suo cujus data est apud Skergill xvij die Septembris hoc anno quod quia *Hervicus* de Staunton Capitalis Justiciarius de Banco Regis, qui habuit custodiam Sigilli de Cancellar[ia] hujus Scaccarii de cætero ad custodiam officii Cancellar[ii] intendere non potest," &c. — Mich. Commun., 17 Ed. 2.; Rot. i. 6. In these two records it is observable, that in the one the Chancellor of the Exchequer is called *Henry*, and in the other *Hervey* de Staunton; but, from the context, it is clear that the names Henry and Hervey are applied to the same individual. I may also add, that there is a variance in the date of the appointment of the Bishop of Exeter; the one record giving the 27th of Sept., and the other the 17th, although it is evident that the one refers to the other.

* "Memorandum quod die Jovis in Vigilia sancti Jacobi Apostoli, anno regis hujus vicesimo incipiente, Hervicus de Staunton præstitit sacramentum, coram Venerabilibus patribus W. Archiespiscopo Eboracensi Angliæ Primate thesaurario W. Exoniensi Episcopo Magistro R. de Baldock Cancellario Regis, et baronibus de Scaccario et justiciarii de communi banco de bene et fideliter se habendo in officiis capitalis justiciarii de banco prout moris est." And at the same time Robert de Ayleston was sworn Chancellor of the Exchequer.—*Madd. Exch.*

† Dug. Chr. Ser.; Beatson.

‡ See Thoroton's History of Nottinghamshire.

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"And Sir Henrie his brother was,
Who gave himselfe to learne,
That when he came unto man's state,
He could the Lawes discerne.

"And in the same went forward still,
And profited muche, I know,
At Ynnes of Courte a Counsailer
And Serjeant in the Lawe.

"And in processe of tyme indeede,
A Judge he came to bee
In the Common Benche at Westminster
Such was his highe degree.

"A Baron wise and of great wealthe,
Who built for Scholers gaine,
Sainet Michaels house in Cambridge Towne,
Good learninge to attaine;

"Which deed was done in the eighteenth yeare
Of Second Edwards King,
One thousande three hundred twenty foure,
For whom they praye and singe.

"In which said house the Stauntons may
Send Students to be placed,
The Founder hath confirmed the same
It cannot be defaced.

"This Lord Baron no yssue had,
We cannot remember his wife,
Nor where his body tombed was
When death had cut off life."*

Sir Robert Parnyng. A.D. 1340. A.D. 1341.

There was no other Chief Justice of much note till Sir Robert Parnyng, who, for his great learning and ability, was placed in the "marble chair," and whom I have already commemorated in the LIVES OF THE CHANCELLORS.†

Sir William de Thorpe.

After an obscure Chief Justice, called SIR WILLIAM SCOT‡, came a very eminent but very unprincipled one, Sir WILLIAM DE THORPE, who was at first supposed to be

* He is frequently mentioned in contemporary records, and must have been a very considerable person in his day, although now fallen into such obscurity.

In the 8th Edward II., Hervicus de Staunton and others are directed to assess and levy a tallage on the City of London: 1 Rot. Parl. 449. And in 1320, 14 Edward II., reference is made to inquests taken before Johannes de Insula, Hervicus de Staunton, and Adam de Lymbergh, "quæ sunt in Scio:" 1 Rot. Parl. 372 a.

In 1325, 19 Edward II., it appears that Henry le Swan was tried at the Eire of London "darreine passe devant Sire *Henr* de Staunton':" Rot. Parl. And in the Patent Roll, 3 Edward III., certain proceedings are referred to in an Inspeximus, as having taken place in the 17th Edward II., "devant Sire Henry de Staunton et ses compaignons justices a les plez le dit vie' piere tenir assignez."—2 Rot. Parl. 427.

† Vol i. ch. xiv.

‡ Dug. Chr. Ser. 44.

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an ornament to his profession, but who brought deep disgrace upon it. From an obscure origin he rose to power and wealth, without being a churchman,—a very unusual occurrence in those days; but the law was becoming, what it has since continued, one of the ties by which the middling and lower ranks in England are bound up with the aristocracy,—preventing the separation of the community into the two castes of *noble* and *roturier*, which has been so injurious in the continental states.

His professional progress. A.D. 1342.

Having with difficulty obtained an adequate education soon after his call to the bar he got business and favour by singular zeal for his clients and subserviency to his patrons. While of less than ten years' standing as a barrister, he received the high rank of King's Serjeant, and the following year he was made Attorney General, and was knighted. He remained in this office five years, during which time he had the good fortune to gain the personal confidence of Edward III., who was in the habit of consulting him respecting the most expedient manner of managing the House of Commons, and obtaining supplies to carry on the French war. In 1347 he was elevated to the office of Chief Justice of the King's Bench, and he was for a time the King's principal adviser. On the premature death of Parnyng, the Great Seal was put into the hands of men of little experience in business, and Lord Chief Justice Thorpe was intrusted with the domestic government of the kingdom.

A.D. 1343.

He is made Chief Justice of the Court of King's Bench.

A.D. 1348.

His addresses to the two Houses of Parliament.

At the parliament held on the King's return after the glorious battle of Cresci, Sir William Thorpe was employed, in place of the Chancellor, to declare the causes of the summons; and he very dextrously flattered the Commons by telling them that "it was the King's special desire to be advised by them respecting the mode of carrying on the war, and, next, how the peace of the nation might be better kept."*

After grave deliberation, the Commons answered that "they were not able to advise any thing respecting the war, and, therefore, desired to be excused as to that point,—being willing to confirm and establish whatever the council and the nobles should determine thereupon. But as to better

* During the Plantagenet reigns, there are frequent instances of the King consulting the Commons on questions of foreign, as well as domestic, policy.

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keeping the peace of the nation, their advice was, that in every county there should be six persons, of whom two to be

A. D. 1348. the greatest men in it, two knights, and two men of the law, or more or less as need should be, and they to have power and commission out of Chancery to hear and determine matters concerning the peace. And because they had been so long in parliament, to their great cost and damage*, they might have a speedy answer to their petitions, in order to get soon back to their own homes." On Thorpe's suggestion, the measure so recommended was promised, and hence our Justices of the Peace and Courts of Quarter Sessions. But, there being still an unwillingness to vote an adequate supply, parliament was dissolved, and great pains were used in influencing the elections for the new one which was called.

A. D. 1349. When it met, Chief Justice Thorpe again made the speech by which the session was opened, and tried to rouse the indignation of the Commons by asserting that "the French had broken the conditions of the truce lately granted to them at Calais, and were preparing a puissant army wherewith to invade the realm." He therefore urged that "they should be armed betimes against the worst which might happen, and see that this war, which was undertaken by the advice and consent of the parliament, might have a prosperous ending." A liberal supply was granted, and the Chief Justice speedily, in the King's name, pronounced the prorogation.†

Although he now seemed so powerful and prosperous, disgrace and ruin were hanging over him. Parliament again met in the following year, but, instead of opening it with royal pomp in the King's name, he stood at the bar of the House of Lords as a criminal. He had been detected in several gross acts of bribery, for which he was now impeached. The record of his trial is not preserved, and we have no particulars of the offences laid to his charge. The common tradition is, that sentence of death was actually passed upon him; and Oliver St. John, in his famous speech on ship-money, in the reign of Charles I., says,—"Sir William Thorpe, Chief Justice of the King's Bench in Edward III.'s

He is charged with bribery.

He is found guilty: qu. whether he was sentenced to death?

* The session had lasted above a fortnight.

† 1 Parl. Hist. 115—118.

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A.D. 1350.

time, having of five persons received five several bribes, which in all amounted to 100*l.*, was for this alone adjudged to be hanged, and all his lands and goods forfeited." I cannot help thinking, however, that this is an exaggeration; no treason was alleged against the Chief Justice, and, as mere bribery could not be construed into a capital offence by any known law, he could not have received such a sentence, unless under an act of attainder; and there is no ascertained instance of such a proceeding before the reign of Henry VIII. The entry in the Close Roll, recording the appointment of a new Chief Justice, merely says, "Will. de Thorpe, Capitalis Justic. pro quibusdam maleficiis, &c., omnia bona terras, &c., forisfecit." * It is possible that a capital sentence might have been pronounced; and St. John, pretending to have seen the original record, says, "The reason of this record is entered in the Roll in these words, 'Quia prædictus Willielmus Thorpe, qui sacramentum domini regis erga populum suum habuit ad custodiendum, fregit malitiose, false et rebelliter, quantum in ipso fuit,' because that he as much as in him lay had broken the King's oath unto the people which the King had intrusted him withal. The next year, 25 Edward III., it was debated in parliament whether this judgment was legal *et nullo contradicente*, it was declared to be just and according to the law; and that the same judgment may be given in time to come upon the like occasion. This case is in point that it is death for any judge wittingly to break his oath or any part of it." Yet I suspect that the patriotic orator, inveighing against the Judges who had, contrary to their oaths, decided for the legality of ship-money, invented the capital sentence upon Thorpe, whose guilt he represents as comparatively venial.† The delinquent certainly did not suffer the last penalty of the law; but, being degraded from his office, and stripped of all his ill-gotten wealth, he languished a few years, and died a natural death.‡

* Claus. 24 Ed. III., in dorso, m. 4.

† 3 St. Tr. 1273. The improbability of such a resolution being come to in the 25th Ed. III. is very great indeed, when we consider that in this very year Parliament passed the famous Statute of Treasons (25 Ed. III. st. 5. c. 2.), by which the subject is so anxiously guarded against such vague charges.

‡ We are not told the amount of his salary as Chief Justice, but Dugdale

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He was succeeded by Sir William Shareshall, a Puisne Judge of the Common Pleas *, of whom little is known except that he was employed to make the opening speech to the two Houses at the commencement of three successive parliaments.

26th Oct. 1351. Sir William Shareshall Chief Justice of the King's Bench.

On the first occasion he enlarged upon the internal state of the country, and upon his recommendation were passed the famous "Statute of Treasons," defining crimes against the state, and the "Statute of Labourers," showing our ancestors to have been then under the delusion, now so fatal to our continental neighbours, that the "organisation of labour" is a fit subject for legislation.

March, 1352. His addresses to both Houses of Parliament. Jan. 1353.

In the following year, the war with France being renewed, the Chief Justice thus tried to excite indignation and to obtain supplies: —

"You are assembled to consider the title of our Lord the King to the crown of France. You know that Philip de Valois usurped it all his life; and not only so, but testified his enmity to England by stirring up war against our King in Gascony, and other dominions belonging to him, seizing upon his rights and possessions, and doing all possible mischief to him both by sea and land. In former parliaments this matter has been propounded to you on behalf of the King, and your advice requested what was best to be done. After good deliberation you declared that you knew no other course than that the King, procuring allies, should go against his adversary by main force, and to enable him to do this you promised to aid him with body and goods. Whereupon he made alliances with several foreign princes and powers, and by the help of the good people of England, and the blessing of God, he gained great victories, yet without being able to obtain a lasting peace. The King has assented to truces, but his adversary deceitfully broke these, actuated by implacable malice against him and his friends. Now, after Philip's decease, John, his son, has wrongfully possessed himself of the kingdom of France, has

says, "Sir William Thorpe, 21 Ed. I., then Chief Justice of the King's Bench, was allowed out of the King's wardrobe at the Feast of All Saints, for his Winter Robes, half a cloth colour curt, three furs of white budg, and one hood of the same budg: and for his livery at Christmas, half a cloth likewise colour curt, one hood containing xxxii bellies of minever helf pur, one fur of minever containing seven tires and two furs of silk, each of seven tires." — *Or. Jur.* p. 98.

* Dug. Cher. Ser.

broken the existing truce both in Gascony and Britany, and has sent to Scotland to renew the ancient alliance with that country, tending to the utter subversion and destruction of the people of England. Wherefore the King, much thanking you, his faithful Commons, for the aids you have already given him, and for the good will he has always found in you, now submits the matter to your consideration, and prays that you will take time to consult about it, and that at sunrise on the morrow you will come to the Painted Chamber to hear if the King will say anything further to you, and to show him your grievances, so that relief may be given to them at this meeting. Further, I charge the Commons, in the King's name, to shorten your stay in town, and that, for the quicker despatch of busness, you immediately make choice of twenty-four or thirty persons out of your whole number, and he will send a number of Lords to confer with them about the business of the nation."

A.D. 1353.

This harangue of the Chief Justice was very favourably received, and the Commons granted to the King three tenths and three fifteenths, "in order to supply his great necessities." *

Chief Justice Shareshall's final political performance was in April, 1355, when, on the first day of the parliament, to induce the Commons vigorously to carry on the war, he expressed the King's earnest desire to make peace on honourable terms; and he asked them "if they would agree to a peace, if it could be had by treaty?" They answered, "that what should be agreeable to the King and his council, should be agreeable to them." Alarmed by their pacific tone, and trusting to their anti-Gallican prejudices, he ventured to ask them "if they consented to a perpetual peace if it might be had?" when, to his great annoyance, "they all unanimously cried out 'yea! yea!'" However, a supply was obtained; and, the French King becoming insolent from the belief that Edward's subjects, tired of the war, would desert him, the immortal victory of Poictiers followed.

Sept. 18. 1356.

In 1358 the office of Chief Justice of the King's Bench was again vacant; but whether by the death or resignation of Shareshall, I have been unable to ascertain. He was succeeded by Sir Henry Green, of whom I find nothing

Sir Henry Green.

* 1 Parl. Hist. 119.

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memorable. Then came the famous Sir John Knyvet, who afterwards held the Great Seal, and of whom I have already told all that I know.*

Sir John Knyvet.

Sir John de Cavendish.

Next we come to a Chief Justice whose career excites considerable interest: Sir John de Cavendish, the ancestor of the Duke of Devonshire. The original name of the family was Gernon, or Gernum; and they changed it on marrying the heiress of the manor of Cavendish, in the county of Suffolk. This, however, was only a small possession; and John, the son of the marriage, being of an aspiring nature, and seeing that in peaceable times promotion was to be gained by civil rather than military service, studied the law, was called to the bar, and soon gained the first-rate practice as an advocate. Such was his reputation, that, in the year 1366, Edward III., after the peace of Bretigni, being desirous of making himself popular by good judicial appointments, raised John de Cavendish to the office of Chief Justice of the King's Bench, although he had not filled the office of Attorney or Solicitor General, or even reached the dignity of the coif. The appointment gave universal satisfaction; and, with De Cavendish presiding over the common law, and Knyvet over equity, it was admitted that justice had never been so satisfactorily administered in Westminster Hall.

His origin.

A.D. 1366. He is made Chief Justice of the King's Bench.

Lord Chief Justice Cavendish held his office sixteen years, being reappointed on the accession of Richard II. with an advance in his salary to 100 marks a year. At last he fell a victim to the brutality of the populace in Wat Tyler's insurrection. After that rebel chief had been killed in Smithfield by Sir William Walworth, there was a rising in Norfolk and Suffolk, under the conduct of a leader much more ferocious, who called himself *Jack Straw*, and incited his followers to more frightful devastations than any ever committed before or since in a *jacquerie* movement in England, where, in the worst times, some respect has been shown to the influence of station and the dictates of humanity. A band of them, near 50,000 strong, as infuriated as the *canaille* of Paris or the peasants of Gallicia in the crisis of a revolution, marched to

A.D. 1382. He is put to death in Wat Tyler's rebellion.

* Lives of the Chancellors, vol. i. p. 266.

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the Chief Justice's mansion at Cavendish, which they plundered and burned. The venerable Judge made his escape, but was taken in a cottage in the neighbourhood. Unmoved by his grey hairs, they carried him in procession to Bury St. Edmund's, as if to open the assizes, and, after he had been subjected to a mock trial in the market-place, he was sentenced to die; Jack Straw's Chief Justice magnanimously declaring, "that, in respect of the office of dignity which his brother Cavendish had so long filled, instead of being hanged, he should be beheaded." It was resolved, however, that he should be treated with insult as well as with cruelty; for his head being immediately struck off, it was placed in the pillory amidst the savage yells and execrations of the bystanders.*

A.D. 1382.

He seems to have been moderate in his accumulation of wealth; for he added very little to his landed estates, and his posterity for some generations remained in obscurity. The next eminent Cavendish we read of was Sir William, lineally descended from the Chief Justice's eldest son, John. This individual, at starting, was not very high in office, being only gentleman-usher to Cardinal Wolsey. But he will ever be remembered with honour for his affectionate fidelity to his master, and for his inimitable Life of him, the earliest and one of the very best specimens of English biography. After Wolsey's fall, he was taken into favour by Henry VIII., and became auditor of the Court of Augmentations, Treasurer of the Chamber, and a Privy Councillor. Taking the side of the Reformation, he received under Edward VI. large grants of abbey lands in the county of Derby. His son was ennobled in the reign of James I. by the title of Baron Cavendish. In a subsequent generation, there were two dukedoms in the family: Cavendish, Duke of Devonshire, still flourishing; and Cavendish, Duke of Newcastle, which became extinct.

His descendants.

* Walsingham.

CHAPTER III.

CHIEF JUSTICES TILL THE DEATH OF SIR WILLIAM GASCOYNE.

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Sir Robert Tresilian.

WE next come to a Chief Justice of the King's Bench who actually suffered the last penalty of the law — and deservedly — in the regular administration of retributive justice, — Sir Robert Tresilian, — hanged at Tyburn.

I can find nothing respecting his origin or education, except a doubtful statement that he was of a Cornish family, and that he was elected a fellow of Exeter College, Oxford, in 1354.* As far as I know, he is the first and last of his name to be found in our judicial or historical records. The earliest authentic notice of him is at the commencement of the reign of Richard II., when he was made a serjeant at law, and appointed a Puisne Judge of the Court of King's Bench.† The probability is, that he had raised himself from obscurity by a mixture of good and evil arts. He showed learning and diligence in the discharge of his judicial duties; but, instead of confining himself to them, he mixed deeply in politics, and showed a determination, by intrigue, to reach power and distinction. He devoted himself to De Vere, the favourite of the young King, who, to the great annoyance of the princes of the blood, and the body of the nobility, was created Duke of Ireland, was vested for life with the sovereignty of that island, and had the distribution of all patronage at home. By the influence of this minion, Tresilian, soon after the melancholy end of Sir John Cavendish, was appointed Chief Justice of the King's Bench; and he was sent into Essex to try the rebels. The King accom-

He is made a Puisne Judge of the Common Pleas.

Chief Justice of the King's Bench.

* Gentleman's Magazine, vol. lxiv. p. 325. I suspect that he is assigned to Cornwall only on the authority of—

"By *Tre*, *Pol*, and *Pen*,
You know Cornish men."

† Close Roll, 1 Rich. II. Liberat. ab anno i. usque ult. — Ric. II. m. 15.

panied him. It is said that, as they were journeying, "the Essex men, in a body of about 500, addressed themselves barefoot to the King for mercy, and had it granted upon condition that they should deliver up to justice the chief instruments of stirring up the rebellion; which being accordingly done, they were immediately tried and hanged, ten or twelve on a beam, at Chelmsford, because they were too many to be executed after the usual manner, which was by beheading."*

A.D. 1382.

Tresilian now gained the good graces of Michael de la Pole, the Lord Chancellor, and was one of the principal advisers of the measures of the Government, being ever ready for any dirty work that might be assigned to him. In the year 1385, it was hoped that he might have got rid, by an illegal sentence, of John of Gaunt, who had become very obnoxious to the King's favourites. "For these cunning flatterers, having, by forged crimes and accusations, incensed the King against him, contrived to have him suddenly arrested, and tried before Judge Tresilian, who, being perfectly framed to their interests, would be ready enough, upon such evidence as they should produce, to condemn him."† But the plot got wind, and the Duke, flying to Pontefract Castle, fortified himself there till his retainers came to his rescue.

In the following year, when there was a change of ministry according to the fashion of those times, Tresilian was in great danger of being included in the impeachment which proved the ruin of the Chancellor; but he escaped by an intrigue with the victorious party, and he was suspected of having secretly suggested the commission signed by Richard, and confirmed by Parliament, under which the whole power of the state was transferred to a commission of fourteen Barons. He remained very quiet for a twelvemonth, till he thought that he perceived the new ministers falling into unpopularity, and he then advised that a bold effort should be made to crush them. Meeting with encouragement, he secretly left London, and, being joined by the Duke of Ireland, went to the King, who was at Nottingham in a progress through the

His plan to enable Richard II. to triumph over the Barons.

* Kennet, i. 248. † Ib. 253.

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midland counties. He then undertook, through the instrumentality of his brother Judges, to break the commission, and to restore the King and the favourite to the authority of which it had deprived them. His plan was immediately adopted, and the Judges, who had just returned from the summer assizes, were all summoned in the King's name to Nottingham.

25th Aug. 1387.

On their arrival, they found not only a string of questions, but answers, prepared by Tresilian. These he himself had signed, and he required them to sign. Belknappe, the Chief Justice of the Common Pleas, and the others, demurred, seeing the peril to which they might be exposed; but, by promises and threats, they were induced to acquiesce. The following record was accordingly drawn up, that copies of it might be distributed all over England: —

The opinion of the Judges on the privileges of Parliament.

"Be it remembered, that on the 25th of Aug., in the 11th year of the reign of K. Rich. II., at the Castle of Nottingham, before our said lord the King, Rob. Tresilian, chief justice of England, and Rob. Belknappe, chief justice of the common bench of our said lord the King, John Holt, Roger Fulthorp, and Wm. de Burgh, knights, justices, &c. and John de Lokton, the King's serjeant-at-law, in the presence of the lords and other witnesses underwritten, were personally required by our said lord the King, on the faith and allegiance wherein to him the said King they are bound, to answer faithfully unto certain questions here under specified, and to them then and there truly recited, and upon the same to declare the law according to their discretion, viz.: —

"1. It was demanded of them, 'Whether that new statute, ordinance, and commission, made and published in the last parl. held at Westm. be not derogatory to the royalty and prerogative of our said lord the King?' To which they unanimously answered that the same are derogatory thereunto, especially because they were against his will.

"2. 'How those are to be punished who procured that statute and commission?'—*A.* That they were to be punished with death, except the King would pardon them.

"3. 'How those are to be punished who moved the King to consent to the making of the said statute?' — *A.* That they ought to lose their lives unless his Maj. would pardon them.

"4. 'What punishment they deserved who compelled, straightened, or necessitated the King to consent to the making of the said

statute and commission?'—*A.* That they ought to suffer as traitors.

"5. 'How those are to be punished who hindered the King from exercising those things which appertain to his royalty and prerogative?'—*A.* That they are to be punished as traitors.

"6. 'Whether after in a parl. assembled, the affairs of the kingdom, and the cause of calling that parl. are by the King's command declared, and certain articles limited by the King upon which the lords and commons in that parl. ought to proceed; if yet the said lords and commons will proceed altogether upon other articles and affairs, and not at all upon those limited and proposed to them by the King, until the King shall have first answered them upon the articles and matters so by them started and expressed, although the King's command be to the contrary; whether in such case the King ought not to have the governance of the parl. and effectually overrule them, so as that they ought to proceed first on the matters proposed by the King: or whether, on the contrary, the lords and commons ought first to have the King's answer upon their proposals before they proceeded further?'—*A.* That the King in that behalf has the governance, and may appoint what shall be first handled, and so gradually what next in all matters to be treated of in parl., even to the end of the parl.; and if any act contrary to the King's pleasure made known therein, they are to be punished as traitors.

"7. 'Whether the king, whenever he pleases, can dissolve the parl. and command the lords and commons to depart from thence, or not?'—*A.* That he can; and if any one shall then proceed in parl. against the King's will, he is to be punished as a traitor.

"8. 'Since the King can, whenever he pleases, remove any of his judges and officers, and justify or punish them for their offences; whether the lords and commons can, without the will of the King, impeach in parl. any of the said judges or officers for any of their offences?'—*A.* That they cannot; and if any one should do so, he is to be punished as a traitor.

"9. 'How he is to be punished who moved in parl. that the statute should be sent for whereby Edw. II. (the King's great grandfather) was proceeded against and deposed in parl.; by means of sending for and imposing which statute, the said late statute, ordinance, and commission were devised and brought forth in parl.?'—*A.* That as well he that so moved, as he who by pretence of that motion carried the said statute to the parl., are traitors and criminals to be punished with death.

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"10. 'Whether the judgment given in the last parl. held at Westm. against Mich. de la Pole, earl of Suffolk, was erroneous and revocable, or not?'— *A.* That if that judgment were now to be given, they would not give it; because it seems to them that the said judgment is revocable, as being erroneous in every part of it.

"In testimony of all which, the judges and serjeants aforesaid, to these presents have put their seals in the presence of the rev. lords, Alex. abp. of York, Rob. abp. of Dublin, John bp. of Durham, Tho. bp. of Chichester, and John bp. of Bangor, Rob. duke of Ireland, Mich. earl of Suffolk, John Rypon, clerk, and John Blake, esq.; given the place, day, month, and year aforesaid."

Tresilian exultingly thought that he had not only got rid of the obnoxious Commission, but that he had annihilated the power of Parliament by the destruction of parliamentary privilege, and by making the proceedings of the two Houses entirely dependent on the caprice of the Sovereign.

He then attended Richard to London, where the opinion of the Judges against the legality of the Commission was proclaimed to the citizens at the Guildhall; and all who should act under it were declared traitors. A resolution was formed to arrest the most obnoxious of the opposite faction, and to send them to take their trials before the Judges who had already committed themselves on the question of law; and, under the guidance of Tresilian, a bill of indictment was actually prepared against them for a conspiracy to destroy the royal prerogative. Thomas Ush, the under sheriff, promised to pack a jury to convict them; Sir Nicholas Brambre, who had been thrice Lord Mayor, undertook to secure the fidelity of the citizens; and all the City Companies swore that they would live and die with the King, and fight against his enemies to their last breath. Arundel, Bishop of Ely, was still Chancellor; but Tresilian considered that the Great Seal was now within his own grasp, and, after the recent examples, in Parnynge and Knyvet, of Chief Justices becoming Chancellors, he anticipated no obstacle to his elevation.

Measures prompted by Tresilian against the Barons.

At such a slow pace did news travel in those days, that, on the night of the 10th of November, Richard and his Chief

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Justice went to bed thinking that their enemies were annihilated, and next morning they were awoke by the intelligence that a large force, under the Duke of Gloucester and the Earls of Arundel and Nottingham, was encamped at Highgate. The confederate Lords, hearing of the proceedings at Nottingham, had immediately rushed to arms, and followed Richard towards London, with an army of 40,000 men. The walls of London were sufficient to repel a sudden assault; and a royal proclamation forbade the sale of provisions to the rebels,—in the hope that famine might disperse them. But, marching round by Hackney, they approached Aldgate, and they appeared so formidable, that a treaty was entered into, according to which they were to be supplied with all necessaries, on payment of a just price, and deputies from them were to have safe conduct through the City on their way to the King at Westminster. Richard himself agreed that on the following Sunday he would receive the deputies, sitting on his throne in Westminster Hall.

11th Nov. 1387.

The Barons gain the ascendency.

At the appointed hour he was ready to receive them, but they did not arrive, and he asked "how it fortuned that they kept not their promise?" Being answered, "Because there is an ambush of a thousand armed men or more in a place called the Mews, contrary to covenant; and therefore they neither come, nor hold you faithful to your word,"—he said, with an oath, that "he knew of no such thing," and he ordered the sheriffs of London to go thither and kill all they could lay hands on. The truth was, that Sir Nicholas Brambre, in concert with Tresilian, had planted an ambush near Charing Cross, to assassinate the Lords as they passed; but, in obedience to the King's order, the men were sent back to the City of London. The Lords, at last, reached Westminster, with a gallant troop of gentlemen; and as soon as they had entered the great hall, and saw the King in his royal robes sitting on the throne, with the crown on his head and the sceptre in his hand, they made obeisance three times as they advanced, and when they reached the steps of the throne they knelt down before him with all seeming humility. He, feigning to be pleased to see them, rose and took each of them by the hand, and said "he

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would hear their plaint, as he was desirous to render justice to all his subjects." Thereupon they said, "Most dread Sovereign, we appeal of high treason Robert Tresilian, that false justice, Nicholas Brambre, that disloyal knight; the Archbishop of York; the Duke of Ireland; and the Earl of Suffolk:"—and, to prove their accusation to be true, they threw down their gauntlets, protesting, by their oaths, that they were ready to prosecute it to battle. "Nay," said the King, "not so; but in the next parliament (which we do appoint beforehand to begin the morrow after the Purification of Our Lady), both they and you, appearing, shall receive according to law what law doth require, and right shall be done."

Tresilian prosecuted for high treason.

It being apparent that the confederate Lords had a complete ascendency, the accused parties fled. The Duke of Ireland and Sir Nicholas Brambre made an ineffectual attempt to rally a military force; but Chief Justice Tresilian disguised himself, and remained in concealment till he was discovered, after being attainted in the manner to be hereafter described.

3d Feb. 1389.

The elections for the new Parliament ran strongly in favour of the confederate Lords; and, on the day appointed for its meeting, an order was issued under their sanction for taking into custody all the Judges who had signed the Opinion at Nottingham. They were all arrested while they were sitting on the bench, except Chief Justice Tresilian; but he was nowhere to be found.

He absconds.

When the members of both Houses had assembled in Westminster Hall, and the King had taken his place on the throne, the five Lords, who were called APPELLANTS,

Proceedings in Parliament.

"Entered in costly robes, leading one another hand in hand, an innumerable company following them, and, approaching the King, they all with submissive gestures reverenced him. Then rising, they declared their appellation by the mouth of their speaker, who said, 'Behold the Duke of Gloucester comes to purge himself of treasons which are laid to his charge by the conspirators.' To whom the Lord Chancellor, by the King's command, answered, 'My Lord Duke, the King conceiveth so honourably of you, that he cannot be induced to believe that you, who are of kindred to him, should attempt any treason against

him.' The Duke with his four companions, on their knees, humbly gave thanks to the King for his gracious opinion of their fidelity. And now, as a prelude to what was going to be acted, each of the Prelates, Lords, and Commons* then assembled had the following oath administered to them upon the rood or cross of Canterbury in full parliament: 'You shall swear that you will keep, and cause to be kept, the good peace, quiet, and tranquillity of the kingdom; and if any will do to the contrary thereof, you shall oppose and disturb him to the utmost of your power; and if any will do any thing against the bodies of the five Lords, you shall stand with them to the end of this present parliament, and maintain and support them with all your power, to live and die with them against all men, no person or thing excepted, saving always your legiance to the King and the prerogatives of his crown, according to the laws and good customs of the realm.'" † CHAP. III. A.D. 1389.

Written articles to the number of thirty-nine were then exhibited by the appellants against the appellees. The other four are alleged to have committed the various acts of treason charged upon them "by the assent and counsel of Robert Tresilian, that false Justice;" and in most of the articles he bears the brunt of the accusation. Sir Nicholas Brambre alone was in custody; and the others not appearing when solemnly called, their default was recorded, and the Lords took time to consider whether the impeachment was duly instituted, and whether the facts stated in the articles amounted to high treason. Ten days thereafter, judgment was given "that the impeachment was duly instituted, and that the facts stated in several of the articles amounted to high treason." Thereupon, the prelates having withdrawn, that they might not mix in an affair of blood, sentence was pronounced, "that Sir Robert Tresilian, the Duke of Ireland, the Archbishop of York, and Earl of Suffolk, should be drawn and hanged as traitors and enemies to the King and kingdom, and that their heirs should be disinherited for

Feb. 13.

Tresilian attainted.

* It will be observed, that although the Commons took this oath they had nothing to do with the trial, either as accusers or judges. At this time there might be an appeal of treason in parliament by private persons, the Lords being the judges; but all appeals of treason in parliament were taken away by 1 Hen. IV. c. 14.—See Bract. 119. a.; 3 Inst. 132.

† 1 St. Tr. 89—101.; 1 Parl. Hist. 196—210.

CHAP. III.

ever, and that their lands and tenements, goods and chattels, should be forfeited to the King."

A.D. 1389.

Tresilian might have avoided the execution of his sentence, had it not been for the strangest infatuation related of any human being possessing the use of reason. Instead of flying to a distance, like the Duke, the Archbishop, and the Earl, none of whom suffered,—although his features were necessarily well known, he had come to the neighbourhood of Westminster Hall on the first day of the session of parliament; and, even after his own attainder had been published, trusting to his disguise, his curiosity induced him to remain to watch the fate of his associate, Sir Nicholas Brambre.

He comes to Westminster in disguise.

Feb. 17.

This chivalrous citizen, who had been knighted for the bravery he had displayed in assisting Sir William Walworth to kill Wat Tyler and to put down the rebellion, having been apprehended and lodged in the Tower of London, was now produced by the constable of the Tower to take his trial. He asked for further time to advise with his counsel, but was ordered forthwith to answer to every point in the articles of treason contained. Thereupon he exclaimed, "Whoever hath branded me with this ignominious mark, with him I am ready to fight in the lists to maintain my innocency whenever the King shall appoint!" "This," says a chronicler, "he spake with such a fury, that his eyes sparkled with rage, and he breathed as if an Etna lay hid in his breast; choosing rather to die gloriously in the field, than disgracefully on a gibbet."

Feb. 19.

The appellants said "they would readily accept of the combat," and, flinging down their gages before the King, added, "we will prove these articles to be true to thy head, most damnable traitor!" But the Lords resolved, "that battle did not lie in this case; and that they would examine the articles with the proofs to support them, and consider what judgment to give, to the advantage and profit of the King and kingdom, and as they would answer before God."

They adjourned for two days, and met again, when a number of London citizens appeared to give evidence against

Brambre. For the benefit of the reader, the chronicler I have before quoted shall continue the story: — CHAP. III.

A.D. 1389. He is discovered, apprehended, and executed.

"Before they could proceed with his trial, they were interrupted by unfortunate *Tresilian,* who being got upon the top of an apothecary's house adjoining to the palace, and descended into a gutter to look about him and observe who went into the palace, was discovered by certain of the peers, who presently sent some of the guard to apprehend him; who entering into the house where he was, and having spent long time in vain in looking for him, at length one of the guard stept to the master of the house, and taking him by the shoulder, with his dagger drawn, said thus, 'Show us where thou hast hid Tresilian, or else resolve thy days are accomplished.' The master, trembling and ready to yield up the ghost for fear, answered, 'Yonder is the place where he lies;' and showed him a round table covered with branches of bays, under which Tresilian lay close covered. When they had found him they drew him out by the heels, wondering to see him wear his hair and beard overgrown, with old clouted shoes and patched hose, more like a miserable poor beggar than a judge. When this came to the ears of the peers, the five appellants suddenly rose up, and, going to the gate of the hall, they met the guard leading Tresilian bound, crying, as they came, 'We have him, we have him.' Tresilian, being come into the hall, was asked 'what he could say for himself why execution should not be done according to the judgment passed upon him for his treasons so often committed?' but he became as one struck dumb, he had nothing to say, and his heart was hardened to the very last, so that he would not confess himself guilty of any thing. Whereupon he was without delay led to the Tower, that he might suffer the sentence passed against him: his wife and his children did with many tears accompany him to the Tower; but his wife was so overcome with grief, that she fell down in a swoon as if she had been dead. Immediately Tresilian is put upon an hurdle, and drawn through the streets of the city, with a wonderful concourse of people following him. At every furlong's end he was suffered to stop, that he might rest himself, and to see if he would confess or acknowledge any thing; but what he said to the friar, his confessor, is not known. When he came to the place of execution he would not climb the ladder, until such time as being soundly beaten with bats and staves he was forced to go up; and, when he was up, he said, 'So long as I do wear any thing upon me, I shall not die;' wherefore the executioner stript him, and found

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certain images painted like to the signs of the heavens, and the head of a devil painted, and the names of many of the devils wrote in parchment; these being taken away he was hanged up naked, and after he had hanged some time, that the spectators should be sure he was dead, they cut his throat, and because the night approached they let him hang till the next morning, and then his wife, having obtained a licence of the King, took down his body, and carried it to the Gray-Friars, where it was buried."*

I add an account of this scene from Froissart, which is still more interesting: —

"Understanding that the King's uncles and the new Council at England would keep a secret parliament at Westminster, he (Tresilian) thought to go and lie there to learn what should be done; and so he came and lodged at Westminster the same day their Council began, and lodged at an ale-house right over against the palace gate, and there he was in a chamber looking out of a window down into the court, and there he might see them that went in and out to the Council, but none knew him because of his apparel. At last, on a day, a squire of the Duke of Gloucester's knew him, for he had oftentimes been in his company: and as soon as Sir Robert Tresilian saw him he knew him well, and withdrew himself out of the window. The squire had suspicion thereof, and said to himself, 'methinks I see yonder Sir Robert Tresilian;' and, to the intent to know the truth, he entered into the lodging, and said to the wife, 'Dame, who is that that is above in the chamber? is he alone, or with company?' 'Sir,' quoth she, 'I cannot shew you, but he has been here a long space.' Therewith the squire went up the better to advise him, and saluted him, and saw well it was true; but he feigned himself, and turned his tale, and said, 'God save you, good man, I pray you be not discontented, for I took you for a farmer of mine in Essex, for you are like him.' 'Sir,' quoth he, 'I am of Kent, and a farmer of Sir John of Hollands, and there be men of the Bishop of Canterbury's that would do me wrong; and I am come hither to complain to the Council.' 'Well,' quoth the squire, 'if you come into the palace I will help to make your way, that you shall speak with the Lords of the Council.' 'Sir, I thank you,' quoth he, 'and I shall not refuse your aid.' Then the squire called for a pot of ale, and drank with him, and paid for it, and

* 1 St. Tr. 115--118.

bade him farewell, and departed; and never ceased till he came to the Council Chamber door, and called the usher to open the door. Then the usher demanded what he would, because the Lords were in Council; he answered and said, 'I would speak with my lord and master the Duke of Gloucester, for a matter that right near toucheth him and all the Council.' Then the usher let him in, and when he came before his master he said, 'Sir, I have brought you great tidings.' 'What be they?' quoth the Duke. 'Sir,' quoth the squire, 'I will speak aloud, for it toucheth you and all my lords here present. I have seen Sir Robert Tresilian disguised in a villain's habit, in an alehouse here without the gate.' 'Tresilian?' quoth the Duke. 'Yea, truly, sir,' quoth the squire, 'you shall have him ere you go to dinner, if you please.' 'I am content,' quoth the Duke, 'and he shall show us some news of his master the Duke of Ireland; go thy way and fetch him, but look that thou be strong enough so to do that thou fail not.' The squire went forth and took four serjeants with him, and said, 'Sirs, follow me afar off; and as soon as I make to you a sign, and that I lay my hand on a man that I go for, take him and let him not escape.' Therewith the squire entered into the house where Tresilian was, and went up into the chamber; and as soon as he saw him, he said, 'Tresilian, you are come into this country on no goodness; my lord, the Duke of Gloucester, commandeth that you come and speak with him.' The knight would have excused himself, and said, 'I am not Tresilian, I am a farmer of Sir John of Hollands.' 'Nay, nay,' quoth the squire, 'your body is Tresilian, but your habit is not;' and therewith he made tokens to the serjeants that they should take him. Then they went up into the chamber and took him, and so brought him to the palace. Of his taking, the Duke of Gloucester was right joyful, and would see him, and when he was in his presence the Duke said, 'Tresilian, what thing makes you here in this country? where is the King? where left you him?' Tresilian, when he saw that he was so well known, and that none excusation could avail him, said, 'Sir, the King sent me hither to learn tidings, and he is at Bristol, and hunteth along the river Severn.' 'What,' quoth the Duke, 'you are not come like a wise man, but rather like a spy; if you would have come to have learnt tidings, you should have come in the state of a knight.' 'Sir,' quoth Tresilian, 'if I have trespassed, I ask pardon, for I was caused this to do.' 'Well, sir,' quoth the Duke, 'and where is your master the Duke of Ireland?' 'Sir,' quoth he, 'of a truth he is with the King.' 'It is showed

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us here,' quoth the Duke, 'that he assembleth much people, and the King for him; whither will he lead that people?' 'Sir,' quoth he, 'it is to go into Ireland.' 'Into Ireland!' quoth the Duke of Gloucester. 'Yea, sir, truly,' quoth Tresilian: and then the Duke studied a little, and said, 'Ah, Tresilian, Tresilian! your business is neither fair nor good; you have done great folly to come into this country, for you are not beloved here, and that shall well be seen; you, and such other of your affinity, have done great displeasure to my brother and me, and you have troubled to your power, and with your counsel, the King, and divers others, nobles of the realm; also you have moved certain good towns against us. Now is the day come that you shall have your payment; for he that doth well, by reason shall find it. Think on your business, for I will neither eat nor drink till you be dead.' That word greatly abashed Tresilian; he would fain have excused himself with fair language, in lowly humbling himself, but he could do nothing to appease the Duke. So Sir Robert Tresilian was delivered to the hangman, and so led out of Westminster, and there beheaded, and after hanged on a gibbet."*

His character.

Considering the violence of the times, Tresilian's conviction and execution cannot be regarded as raising a strong presumption against him: but there seems little doubt that he flattered the vices of the unhappy Richard; and historians agree, that, in prosecuting his personal aggrandisement, he was utterly regardless of law and liberty.† He died unpitied, and, notwithstanding the "historical doubts" by which we are beset, no one has yet appeared to vindicate his memory.

He left behind him an only child, a daughter, who was married into the respectable family of Howley, from whom descended the late venerable Archbishop of Canterbury.‡

I must now give some account of his contemporary, SIR

* Frois. part 2. fol. 110.

† Thus Guthrie says (A.D. 1384.), "Richard was encouraged in his jealousy of the Duke of Lancaster both by the clergy about his person, and Tresilian, his infamous chief justiciary, who undertook, if the King should cause the Duke to be arrested, to proceed against him as a common traitor."—Vol ii. p. 326.

"Tresilian had no rule of judgment but the occasion it was to serve, and he knew no occasion which he could not render suitable to law. He was too ignorant to be serviceable even to the wretched politics of that court, any further than by blind compliance. Thus, like a dog chained up in darkness, when unmuzzled he was more fierce, and, without distinction, tore down all whom his wicked keepers turned into his tremendous haunt."—Vol. ii. p. 349.

‡ Gentleman's Magazine, vol. lxiv. p. 325.

CHAP. III.

Sir Robert Belknappe.

ROBERT BELKNAPPE, Chief Justice of the Common Pleas, who, although trepanned into the unconstitutional and illegal act of signing the answers which Tresilian had prepared at Nottingham, with a view to overturn the party of the Duke of Gloucester and the Barons, appears to have been a respectable Judge and a worthy man.

His family.

The name of his ancestor (spelt Belknape) is to be found in the list of the companions of William the Conqueror who fought at Hastings, preserved in Battle Abbey.* The family continued in possession of a moderate estate in the county of Essex, without producing any other member who gained distinction till the reign of Edward III. Robert, a younger son, was then sent to push his fortune in the inns of court, and he acquired such a taste for the law, that on the death of his father and elder brother, while he was an *apprentice*, he resolved still steadily to follow his profession, and to try for its honours. After some disappointments he was made a King's Sergeant †; and finally his ambition was fully gratified with the office of Chief Justice of the Common Pleas. He gave high satisfaction as a Judge, and, being esteemed by all parties, it was expected that on the accession of Richard II. he would have been appointed Chief Justice of the King's Bench; but he was passed over through the intrigues of Tresilian. He was permitted, however, to retain "the pillow of the Common Pleas;" and with this he was quite contented, for, devoting himself to his judicial duties, he had no desire to mix in the factions which then divided the state.

A.D. 1367.

A.D. 1375.

He is made Chief Justice of the Common Pleas.

A.D. 1377.

He did not take any part in the struggle which ended in the Commission for making fourteen Barons viceroys over the King; and he went on very quietly and comfortably till

* Thierry, Nor. Con. ii. 385.

† While King's Serjeant, he seems to have had a salary of 20*l.* a year, in respect of which he was sometimes sent as a judge of assize, and sometimes he pleaded crown cases as an advocate:—

"Issue Roll, 44 Edward III.

"Robert Belknappe." To Robert Belknappe, one of the Justices to hold the assizes in divers counties in the kingdom of England, and to deliver the gaols there, receiving yearly 20*l.* for his fee in the office aforesaid. In money delivered to him for half a year's payment, 10*l.*

"To the same Robert, one of the King's Serjeants, in money delivered to him in discharge of the 10*l.* payable to him at Michaelmas Term last past, for the 20*l.* yearly which the Lord the King lately granted to the same Robert, to be received at the Exchequer in aid of his expenses in prosecuting and defending his business, 10*l.*"—*Devon's Issue Rolls*, p. 369. m. 14.

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the month of August, 1387, when, returning from the summer circuit, he was summoned in the King's name to attend a council at Nottingham. On his arrival there he was received by Lord Chief Justice Tresilian, who at once explained to him the plan which had been devised for putting down the Duke of Ireland and the Barons; and showed him the questions to be submitted to the Judges, with the answers which they were desired to return. He saw that many of these answers were contrary to law, and, though extrajudicial opinions were given without scruple by the Judges to the Crown ages afterwards, he was startled by the danger to which he must expose himself by openly flying in the face of those who were actually in possession of supreme power. He therefore flatly refused to sign the answers, and he did not yield till the Duke of Ireland and the Earl of Suffolk were called in and threatened to put him to death if he remained contumacious any longer. Thereupon he did sign his name under Tresilian's, saying, "Now I want nothing but a hurdle and halter to bring me to that death I deserve. If I had not done this, I should have been killed by your hands; and, now I have gratified the King's pleasure and yours in doing it, I have well deserved to die for betraying the nobles of the land." *

A. D. 1387. The manner in which he was coerced into the giving of an illegal opinion.

Belknappe observed with great dismay the King's march to London, and the ensuing civil war which terminated in favour of the Barons; but he remained unmolested till the 3d day of February following, when he was arrested while sitting in the Court of Common Pleas, and, along with the other Judges, was committed to the Tower of London. There he lay till after the trial of Brambre and the apprehension and execution of Tresilian.

He is arrested and convicted of high treason.

A. D. 1389.

2d March.

The House of Commons then took up the prosecution against Sir Robert Belknappe, and the other Judges, and impeached them before the House of Lords, "for putting

* Another account makes him say, "Now I want nothing but a ship or a nimble horse, or a halter, to bring me to that death I deserve" (3 *Tyrrell*, 906.); and a third, "Now here lacketh nothing but a rope, that I may receive a reward worthy of my desert; and I know that if I had not done this, I should not have escaped your hands; so that for your pleasures and the King's I have done it, and thereby deserve death at the hands of the Lords."—(3 *Holin.* 456.)

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their hands and seals to the questions and answers given at Nottingham, as aforesaid, by the procurement of Sir Robert Tresilian, already attainted for the same." Some of them pretended that their answers had not been faithfully recorded; but Sir Robert Belknappe pleaded the force put upon him, declaring "that when urged to testify against the Commission, so as to make it void, he had answered, that the intention of the Lords, and such as assisted in making it, and the statute confirming it, was to support the honour and good government of the King and kingdom: that he twice parted from the King, having refused to sign the answers: that, being put in fear of his life, what he had done proceeded not from his will, but was the effect of the threats of the Archbishop of York, the Duke of Ireland, and the Earl of Suffolk; and that he was sworn and commanded, in presence of the King, upon pain of death, to conceal this matter. He therefore prayed that, for the love of God, he might have a gracious and merciful judgment." The Commons replied, that "the Chief Justice and his brethren, now resorting to such shifts, were taken and holden for sages in the law; and they must have known that the King's will, when he consulted them at Nottingham, was, that they should have answered the questions according to law, and not, as they had done, contrary to law, with design, and under colour of law, to murther and destroy the Lords and loyal lieges who were aiding and assisting in making the Commission and the statute confirming it, in the last Parliament:— therefore, they ought all to be adjudged convicted and attainted as traitors."

The Lords Spiritual withdrew, as from a case of blood; and the Lords Temporal, having deliberated upon the matter, pronounced the following sentence: — "That inasmuch as Sir Robert Belknappe and his brethren, now impeached by the Commons, were actually present in the late parliament when the said Commission and statute received the assent of the King and the three estates of the realm, being contrived, as they knew, for the honour of God, and for the good government of the state, of the King, and whole kingdom; and that it was the King's will they should not have answered

Judges attainted of high treason.

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otherwise than according to law; yet they had answered in manner and with the intent charged against them: they were, by the Lords Temporal, and by the assent of the King, adjudged to be drawn and hanged as traitors, their heirs to be disinherited, and their lands and tenements, goods and chattels, to be forfeited to the King." *

Richard himself sat on the throne during the trial, and was much shocked at this proceeding. But, to his unspeakable relief, as soon as the sentence was pronounced, the Archbishop of Canterbury and all the prelates returned, and prayed that "the execution, as to the lives of the condemned Judges, might be respited, and that they might obtain their lives of the King." This proposal was well relished, both by Lords and Commons †; and, after some consultation, the King ordered execution to be stayed, saying that "he would grant the condemned Judges their lives, but the rest of the sentence was to be in full force, and their bodies were to remain in prison till he, with the advice of the Lords, should direct otherwise concerning them." ‡

The sentence commuted for transportation to Ireland.

A few days afterwards, while the Parliament was still sitting, it was ordained that "they should all be sent into Ireland, to several castles and places, — there to remain during their lives; each of them with two servants to wait upon him, and having out of their lands and goods an allowance for their sustenance." Belknappe's was placed at the rather liberal sum of 40*l.* a-year. §

* 1 Parl. Hist. 197—211.; 1 St. Tr. 89—123.

† "The Parliament considered that the whole matter was managed by Tresilian, and that the rest of the Judges were surprised and forced to give their opinion."—1 *Kennet*, 263.

This Parliament was rather unjustly called "The Merciless Parliament."—4 Rapin, 49. Others more justly styled it "The Wonder-working Parliament."—1 Kennet, 262.

‡ 3 Tyrrell, 630. 632.

§ "5th Nov. an. 13 Ric. II. To Sir Robert Belknappe, knight, who, by force of a judgment pronounced against him in the King's last parliament assembled at Westminster, was condemned to death; and all and singular the manors, lands, and tenements, goods, and chattels whatsoever, which belonged to the aforesaid Robert, were seised into the King's hands, as forfeited to the King for the reason aforesaid: whereupon the said Lord the King being moved with mercy and piety, and wishing and being desirous of making a competent provision for the support of the same Robert, towards whom he was moved with pity, did remit and pardon the execution of the judgment aforesaid, at the request of very many of the prelates, great men of the estate, and other nobility of this realm, lately attending the said parliament; and of his especial grace,

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He was accordingly transported to Ireland, then considered a penal colony. At first he was stationed at Drogheda, having the liberty of walking about within three leagues of that town.* He was subsequently transferred to Dublin; and, after he had suffered banishment for nine years, he had leave to return to his own country, and to practise the law in London.† This mitigation was at first complained of, as being contrary to a sentence pronounced in full parliament—but it was acquiesced in; and, although the attainder never was reversed, King Richard, considering him a martyr, made him a grant of several of his forfeited estates.

He is allowed to return to England.

He never again appeared in public life, but retired into the country, and, reaching extreme old age, became famous for his piety and his liberality to the Church. By a deed bearing date October 8th, in the second year of King Henry IV., he made over a good estate to the Prior of St. Andrew in Rochester, to celebrate mass in the cathedral church there for ever, for the soul of his father John, of his mother Alice, and for the souls of himself and all his heirs.‡ He died a few months afterwards.

His death.

He was married to Sibbella, daughter and heiress of John Dorsett, of an ancient family in Essex. Holding estates in her own right, these were not forfeited by her husband's attainder; and, bringing an action during his banishment for an injury done to one of them, the question arose, whether she could sue alone, being a married woman? But it was adjudged that, her husband being disqualified to join as a plaintiff, she was entitled to the privilege of suing as a *feme sole*; although Chief Justice Markham exclaimed, —

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with the assent of his council, of the 13th day of July, in the 12th year of his reign, granted to the same Robert 40*l.* yearly, to be received during his life out of the issues and revenues of the manor lands and tenements aforesaid, to be paid by the hands of the farmers thereof for the time being, &c., according to an ordinance of the Parliament aforesaid. In money paid to him by the hands of Juliana his wife, viz. by assignment made to the same Juliana this day, £0*l.*, and in money counted, 20*l.* and — 40*l.* (A list of the horses, with a description of them, belonging to the said Robert, is entered on this Roll.)"— *Devon's Issue Rolls*, 240.

* "Drouda et infra præcinctum trium leucarum circa dictum villam."— *Rymer*, vol. vii. 591.

† 3 Tyrrell, 959.; 1 Kennet, 274.

‡ This estate still belongs to the Dean and Chapter of Rochester. — See Hasted's Kent, iii. 474.

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"Ecce modo mirum, quod fœmina fert breve regis,
Non nominando virum conjunctum robore legis." *

The attainder was reversed in favour of Sir Hamon Belknappe, the Chief Justice's son. The male line of the family failed in a few generations; but the Stanhopes, the Cokes, and the Shelleys, now flourishing, are proud of tracing their pedigree to the Chief Justice, notwithstanding the ignominious sentence passed upon him.

Sir William Thirnynge.

There is only one other Chief Justice who flourished in the reign of Richard II. of sufficient eminence to be commemorated, — Sir WILLIAM THIRNYNGE, who pronounced upon that unfortunate monarch the sentence of deposition. The family of this great lawyer seems to have been unknown, both before and after his short illustration of it. He was made a Puisne Judge of the Common Pleas in the year 1388 †, at a famous time for promotion in Westminster Hall, — one Chief Justice being hanged, and all the other Judges being cashiered, attainted, and banished.‡ He probably was not, previously, of much mark or likelihood, but he proved to be one of the most distinguished magistrates who ever sat on the English bench, being not only deeply versed in his profession, but of spotless purity and perfect independence. On the death of Sir Robert de Charleton, who had been appointed Chief Justice of the Common Pleas in the room of Belknappe, he succeeded to that office §, which he filled with high credit in three reigns.

Chief Justice of the Common Pleas.

There are many of his decisions to be found in the YEAR-BOOKS, but they are all respecting *aid-prayers*, *essoins*, and other such subjects, which have long been obsolete; and I

* Lord Chancellor Ellesmere, in citing this decision in the case of the PASTNATI, states that Sir Robert Belknappe had been banished into Gascony "*relegatus in Vasconiam*," and that he continued there in the reign of Henry IV. — whereas Ireland was the place of his banishment, and he had been recalled by Richard II. — See 2 St. Tr. 559.

† 11th April, Pat. 11 Rich. II. p. 2. m. 21.

‡ The salary of a puisne could not have been very attractive to a barrister in good practice, for it was still only 40 marks a year: —

"16th Oct., 19 Richard II. To William Thirnyng, one of the Justices of the Common Bench, receiving yearly 40 marks for his fee in the office aforesaid. In money paid to him by the hands of William Vaux, in discharge of 20 marks paid to him for this his fee. By writ, &c., 13*l.* 6*s.* 8*d.*" — *Dev. Issue Rolls*, 262.

§ Pat. 19. Ric. II. p. 1. m. 1.

must confine myself to the part he bore in an historical transaction which must ever be interesting to Englishmen. CHAP. III.

A.D. 1399. Justification of the part he took in the deposition of Rich. II.

While we honour Lord Somers and the patriots who took the most active part in the revolution of 1688, by which a King was cashiered, hereditary right was disregarded, and a new dynasty was placed on the throne, we are apt to consider the Kings of the house of Lancaster as usurpers, and those who sided with them as rebels. Yet there is great difficulty in justifying the deposition of James II., and condemning the deposition of Richard II. The latter sovereign, during a reign of above twenty years, had proved himself utterly unfit to govern the nation, and, after repeated attempts to control him, and promises on his part to submit to constitutional advice, he was still under the influence of worthless favourites, and was guilty of continued acts of tyranny and oppression; so that the nation, which, with singular patience, had often forgiven his misconduct from respect to the memory of his father and his grandfather, was now almost unanimously resolved to submit no longer to his rule.

I therefore cannot blame Chief Justice Thirnynge for attempting to rescue the country from the state of confusion into which it had fallen, and to restore regular government under a new sovereign, who, although he was not next in succession according to the rules of hereditary descent, was of the blood royal,—who was by birth the nearest to the throne of those who could be placed upon it in such an exigency*, —who, by his vigour and his prudence, had shown capacity to govern,—and to whom all classes of the community looked as their deliverer. Thirnynge neither gained nor expected to gain any personal advantage from the change, and he does not appear to have been actuated by any improper motive.

Henry of Bolingbroke being, soon after his landing at Ravenspurg, *de facto* master of the kingdom, writs were issued in Richard's name for a new parliament to meet at Westminster on the 30th of September, when it was planned that there should be a formal transfer of the crown. Thirnynge certainly

* The Earl of March, the legitimate heir after Richard II., was then a boy only seven years old.

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lent himself to this design, and was the principal agent in carrying it into effect. On the day before parliament was to assemble, he went with several other commissioners to the Tower of London, where Richard was confined, to remind him of a promise he had recently made at Bristol that he would abdicate, and to obtain from him a formal renunciation of his rights. According to the account then published (which must be regarded with some suspicion), Richard spontaneously and cheerfully signed a paper, whereby he absolved all his subjects from their allegiance, and confessed himself to be "utterly insufficient and unuseful for rule and government." *

Next day, when the Lords and Commons assembled in Westminster Hall, the throne being vacant, and Bolingbroke still sitting on the left side of it, occupying the uppermost place on the Duke's bench, this resignation was produced and read. But, lest doubts should afterwards be started respecting its validity, on the ground that it was executed under *duress*, Thirnynge advised that articles should be exhibited, charging Richard with misconduct, whereby he had forfeited the crown, and that sentence of deposition should

* Sir John Hayward says, that when Thirnynge and his companions came to the Tower, "the unhappy monarch was brought forth, apparelled in his royal robes, the diadem on his head, and the sceptre in his hand, and was placed among them in a chair of state." He adds, that, after a little pause, the King arose from his seat, and spoke to the following effect:—

"I assure myself that some at this present, and many hereafter, will account my case lamentable; either that I have deserved this dejection, if it be just; or if it be wrongful, that I could not avoid it. Indeed I do confess, that many times I have showed myself both less provident and less painful for the benefit of the commonwealth, than I should, or might, or intended to do hereafter; and have in many actions more respected the satisfying of my own particular humour, than either justice to some private persons, or the common good of all: yet I did not at any time either omit duty or commit grievance, upon natural dulness or set malice; but partly by abuse of corrupt counsellors, partly by error of my youthful judgment. And now the remembrance of these oversights is so unpleasant to no man as to myself; and the rather because I have no means left, either to recompence the injuries which I have done, or to testify to the world my reformed affections, which experience and stayedness of years had already corrected, and would daily have framed to more perfection. But whether all the imputations wherewith I am charged be true, either in substance, or in such quality as they are laid; or whether, being true, they be so heinous as to enforce these extremities; or whether any other prince, especially in the heat of youth, and in the space of 22 years, the time of my unfortunate reign, doth not sometimes, either for advantage, or upon displeasure, in as deep manner grieve some particular subject, I will not now examine: it helpeth not to use defence, neither booteth it to make complaint; there is no place left for the one, nor pity for the other: and therefore I refer it to the judgment of God, and your less distempered considerations. I accuse no man, I blame no fortune, I complain of nothing; I have no pleasure in such vain and needless comforts; and if I listed to have stood upon terms, I know I have great favourers abroad; and some friends, I hope, at home, who would have been ready, yea forward on my behalf, to set up a bloody and doubtful war; but I esteem not my dignity at so high a price, as the hazard of so great valour, the spilling of so much English blood, and the spoil and waste of so flourishing a realm, as thereby might have been occasioned. Therefore, that the commonwealth may rather rise by my fall, than I stand by the ruin thereof, I willingly yield to your desires; and am here come to dispossess myself of all public authority and title, and to make it free and lawful for you to create for your king, Henry duke of Lancaster, my cousin german, whom I know to be as worthy to take that place, as I see you willing to give it to him."

be formally passed upon him by the states of the realm. Accordingly, a sort of indictment was produced, consisting of no fewer than thirty-three counts, which charged the unhappy Richard with many very grave and some rather frivolous offences. We do not exactly see how this step materially legalised or formalised the proceeding, for he was never called upon to plead, and he had no opportunity of urging any defence. The Record that was made up, after setting forth the articles, thus proceeds: —

"And because it seemed to all the estates of the realm, being asked their judgments thereupon, as well severally as jointly, that these crimes and defaults were sufficient and notorious to depose the said King, considering also his own confession of his insufficiency, and other things contained in the said renunciation, the said states did unanimously consent that, *ex abundanti*, they should proceed to a deposition of the said King."

He is appointed to carry to Richard II. the renunciation of the allegiance of the nation.

Thirnynge and several other commissioners were then appointed to pronounce the deposition, and it was pronounced accordingly. Next followed a form which we should think very unnecessary and valueless, but to which great importance seems to have been attached: —

"Furthermore," says the Record, "the said states, willing that nothing should be wanting which might be of value or ought to be required touching the premises, being severally interrogated thereupon, did constitute the same persons that were before nominated commissioners to be their procurators, jointly and separately, to resign and give back to the said King Richard the homage and fealty to him before made."

But, without waiting for this intimation, Bolingbroke, by Thirnynge's advice, seated himself on the throne, saying "In the name of Fader, Son, and Holy Ghost, I, Henry of Lancaster, chalenge this rewme of Ynglonde and the croun with all the members and the appurtenances thereto belonging."

Although Henry now took upon himself the full exercise of royalty, and forthwith in his own name summoned the parliament to meet, still, to perfect his title, Thirnynge and his brother mandatories went next day to the Tower to resign to Richard the homage and fealty of the nation, and drew up

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with his own hand a report, still extant, of what then occurred, which is interesting both to the philologist and the historian, as it affords us a genuine specimen of the construction and orthography of our language in the fourteenth century: —

"The Words which William Thirnyng spake to Monsire Richard, late King of England, at the Tower of London, in his chamber, on Wednesday next after the feast of St. Michael the Archangel, were as follow:

The account of the manner in which he executed this commission.

"Sire, — It is wele know to zou*, that ther was a parlement somon'd of all the states of the reaume for to be at Westmystre, and to begin on the Tuesday in the morn of the fest of St. Michel the Archangel, that was zesterday; by cause of the which summons all the states of this lond were there gadyr'd, the which states hole made thes same persones that ben comen here to zowe now, her procurators, and gaven hem full autorite and power, and charged hem for to say the words that we shall say to zowe in their name, and on their behalve; that is to wytten, the Bishop of Seint Assa for ersbishoppes and bishoppes, the Abbot of Glastenbury for abbots and priours, and all other men of holy chirche, seculers and rewelers, the Earle of Gloucestre for dukes and erls, the Lord of Berkeley for barons and banerettes, Sir Thomas Irpyngham, chamberleyn, for all the bachilers and commons of this lond be south; Sir Thomas Grey for all the bachilers and commons by north, and my felawe Johan Markham and me for to come with hem for all thes states. And so, sire, these words, and the doing that we shall say to zowe, is not onlych our wordes but the doyngs of all the states of this lond, and our charge in her name.— And he answered and said, that he wyste wele that we wold noght say but as we were charged.—Sire, ze remembre zowe wele that on Moneday, in the fest of Seint Michel the Archaungel, ryght here in this chamber, and in what presence ze renounced and cessed of the state of kynge and of lordeship, and of all the dignite and wyrship that longed thereto, and assoiled all zour leiges of her leigance and obeisance that longed to zowe uppe the fourme that is contened in the same renunciation and cession, which ze redde zour self by zour mouth, and affermed it by zour othe, and by zour owne writing. Upon which ze made and ordeined your procurators the Ersbishop of Zork and the Bishop of Hereford for to notifie and declare in zour name thes renunciation and cession at

* It is curious that the letter z then in England, as long afterwards in [illegible] stood for the sound now denoted by y.

Westmynstre to all the states, and all the people that was there gadyr'd, bycause of the summons aforesaid, the which thus don yesterday by thes lords zour procuratours, and wele herde and understouden, thes renunciation and cession were plenelich and frelich accepted, and fullich agreed by all the states and people aforesaid. And over this, sire, at the instance of all thes states and people, there ware certain articles of defautes in zour governance zedde there, and tho wele herd and pleinelich understouden to all the states foresaid, hem thoght hem so trewe, and so notorie, and knowen, that by tho causes and by no other, as thei sayd, and havyng consideration to zour own wordes in zour own renunciation and cession, that ze were not worthy, no sufficient ne able for to governe, for zour owne demerites, as it is more pleinelich contened therein; hem thoght that was reasonable and cause for to depose zowe, and her commissaries that they made and ordein'd, os it is of record, ther declared and decreed, and adjudged zow for to be deposed, and pryved zowe of the astate of king, and of the lordeship conteined in the renunciation and cession forsayd, and of all the dignite and wyrshippe, and of all the administration that longed thereto. And we procurators to all thes states and people forsayd os we be charged by hem, and by her autorite gyffen us, and in her name zelde zow uppe for all the states and people forsayd, homage, leige, and feaute, and all leigeance, and all other bondes, charges, and services thar long thereto, and that non of all thes states and people fro thys tyme forward ne bere zowe feyth, ne do zowe obeisance os to that king. — And he answered and seyd, that he loked not ther after, but he seyd, that after all this he hoped that is cosyn wolde be gude lord to hym."

When Parliament again met on the 6th of October, under new writs from the Duke of Lancaster, without any change in the members*, Thirnynge gave an account of the manner in which he had executed his duty in surrendering the allegiance of the nation to the discrowned King; and, then the oaths being taken to Henry IV., the march of government proceeded as if the heir apparent had been proclaimed on the demise of his father.

* Afterwards the contrivance resorted to when a meeting of the states was wanted and could not be summoned by the King, whose authority was to be recognised, was to call the meeting a CONVENTION — and then, a King being put on the throne, to turn it into a Parliament by an act passed by his authority and that of the two Houses; as in 1660 and 1689.

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He acts as Chief Justice under Henry IV.

Thirnynge received a new patent as Chief Justice of the Common Pleas, and continued to fill the office during the whole of this reign, without any increase to his dignity, but with ever-growing respect from the public. He did not again mix in politics, even so much as Sir Wm. Gascoigne, who became Chief Justice of the King's Bench. During the insurrections of the Percys and Owen Glendower, he quietly continued administering justice at Westminster; and the only battles he witnessed were a few in Tothill Fields, between champions on trials of writs of right, when he and his brethren, attired in their scarlet robes, attended to see that the laws of the ring were observed, and to award the fruits of victory to the successful side. He was summoned to every parliament; but he merely gave his opinion on juridical questions, when consulted, for the guidance of the House of Lords. Although he was sworn a privy councillor, the King being his own minister, this was little more than an honorary distinction to him.

A.D. 1413.

Thirnynge, on the death of Henry IV., had the satisfaction to see his son's title universally acknowledged, and the Lancastrian line seemed for ever established on the throne. It was expected that this venerable magistrate would now be displaced to make way for some one recommended by the profligate companions of the new King when Prince of Wales; but he was continued in his office, with high compliments to his ability and integrity *, and he was again sworn of the Privy Council, along with the other faithful servants of the late King, who were thanked for having tried to repress the excesses of the heir apparent. Within a year he was attacked by a disease which compelled him to resign, and he expired long before the commencement of the fatal War of the Roses. Had this been foreseen, it would probably have induced him to advise his countrymen rather to submit to the capricious tyranny of Richard, than to encounter the danger of a disputed succession, which was for many years to deluge the kingdom with blood.

His death.

I believe it is long since there were any *Thirnynges* in any part of England; and we have here an instance of a name

* Pat. 1 Hen. v. p. 1. m. 36.

being utterly extinguished,—while other families have multiplied so as to form a crowded population in extensive districts, and, by migrations, are found in the remotest parts of the kingdom.*

Sir William Gascoigne.

The great contemporary Judge who gave lustre to the reign of Henry IV. was SIR WILLIAM GASCOIGNE † — familiar to us all from the anecdote of his having committed the Prince of Wales to prison, and from being a conspicuous character in one of the most popular of the dramas of Shakspeare.

His origin and education.

He was born about the middle of the reign of Edward III., at Gawthorp, in the county of York, where his family — of Norman extraction — had been seated for several centuries. Instead of being distinguished, like his ancestors, for military prowess, his ambition was to be a profound lawyer and a great judge. While yet a boy, he was sent to the University of Cambridge, where he was initiated in grammar and philosophy; and, after a few years' residence there, he was transferred to the Inns of Court. Two of these (although their written records do not extend so far back) contend for the honour of having had him as a member. The Middle-Temple men assert that, according to certain traditions, he belonged to them; while the Gray's Inn men rely upon the fact that his arms are to be found in a window in their hall, among those of the dignitaries of their society. He certainly devoted himself to the study of the common law with extraordinary zeal and perseverance. After a seven years' course, and many examinations and disputations to test his proficiency, he was admitted to practise as an "utter barrister." From his learning and assiduity he was soon in considerable business; and among his clients was John of Gaunt, to whom he rendered

His success at the bar.

* Of course I do not refer to names taken from trades, such as *Smith*, nor to patronymics, such as *Johnson*, which may have been assumed and borne by different families wholly unconnected in blood.

† I have preferred the more modern spelling of this name, but it is found spelt in more than twenty other different manners,—Gaskin, Gauscin, Gascoygne, Gascoinge, Gascoyn, Gascun, Gasken, Gaskyn, Gaskun, Gaston, Gastone, Gastoyn, Gastoynge, Gasquin, Guasquyne, Gawsken, Vascon, Guascoyn, Gaskoigne, and De Gasquone. For *Christian* name, "William" was the great patronymic in the family, perhaps in compliment to the Conqueror; and in their pedigree are counted 16 Williams lineally succeeding each other,—7 before, and 8 after, the Chief Justice.

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valuable assistance, in managing the concerns of the Duchy of Lancaster.

Sept. 1398.

When Henry of Bolingbroke and the Duke of Norfolk, being about to engage in single combat in the lists at Coventry, were banished from the kingdom, Richard II. gave each of them power to name an attorney, or agent, who might claim and sue for any inheritance that should fall to them in their absence. Gascoigne was named attorney for the former, on the suggestion of the "time-honoured Lancaster," who saw himself near the end of his long career, and was anxious that the best measures should be taken to secure his vast possessions for his exiled son. Richard, pretending to be very friendly to his uncle and his cousin, confirmed the nomination; and, out of compliment to them, appointed Gascoigne King's Serjeant, which placed him at the head of the Bar.*

He is appointed attorney to represent Bolingbroke, afterwards Henry IV.

Feb. 1399.

On the death of John of Gaunt, in the beginning of the following year, Gascoigne, as the attorney of his son, the Duke of Hereford, now Duke of Lancaster, sued in the Court of Wards and Liveries, that seisin might be given to him of the Duchy and County Palatine of Lancaster and his other lands held of the Crown; offering to do homage, and swear allegiance, in the name of the absent heir: but Richard, being again in the hands of worthless favourites who wished to divide these spoils among themselves, declared a resolution to retain them in his own hands, at least till the ten years had expired for which the sentence of banishment had been pronounced. Gascoigne presented a respectful memorial, reminding the King how his appointment as attorney for Hereford had been confirmed under the broad seal; and prevailed on the Duke of York to remonstrate, in a speech of which the following is probably a pretty accurate report: —

His proceedings in this capacity on the death of John of Gaunt.

"Take Hereford's rights away, and take from time
His charters, and his customary rights.
. . . . . how art thou a king,
But by fair sequence and succession?
Now, afore God (God forbid, I say true!)
If you do wrongfully seize Hereford's rights,

* Dugd. Chr. Ser.

Call in the letters patents that he hath
By his attornies-general to sue
His livery, and deny his offer'd homage,
You pluck a thousand dangers on your head,
You lose a thousand well-disposed hearts,
And prick my tender patience to those thoughts
Which honour and allegiance cannot think."

However, the fatal answer was given, —

"Think what you will; we seize into our hands
His plate, his goods, his money, and his lands." *

Accordingly, a *supersedeas* was passed under the Great Seal, revoking Gascoigne's authority to sue as attorney for the banished Duke; and the whole of his property, real and personal, was taken possession of as forfeited to the Crown.†

Gascoigne sent intelligence of this outrage to the young Duke of Lancaster, who, as soon as he had made the necessary preparations, landed at Ravenspurg; at first only claiming his rights as a subject, but soon openly aiming at the crown.

During the struggle, Gascoigne did not join Henry in the field, but, remaining in London, advised measures for aiding his cause; and, when the nation had declared for him, acted in concert with Chief Justice Thirnynge in smoothing his way to royalty.

He is appointed Chief Justice of the King's Bench.

Henry IV. being proclaimed King, one of the first acts of his reign was to appoint Gascoigne Chief Justice of the Court of King's Bench, and to confer upon him the honour of knighthood. ‡

* Shaks. Rich. II. act ii. sc. 1.

† The revocation of Gascoigne's authority to represent Henry was made one of the charges against Richard for which sentence of deposition was pronounced against him. "Art. 12. — After the said King had graciously granted his letters patent to the Lord Henry, now Duke of Lancaster, that in his absence, whilst he was banished, his general attornies might prosecute for livery to him to be made of all manner of inheritance or successions belonging to him, and that his homage should be respited paying a certain reasonable fine, — he injuriously did revoke the said letters patent, against the laws of the land, thereby incurring the crime of perjury." — 1 *St. Tr.* 143.

‡ See Dug. Chr. Ser. — The exact date of Gascoigne's appointment to this office has not been ascertained; and some have deferred it for a year or two, chiefly on the ground that in the first parliament of Henry IV. the confession of John Hall, concerned in the murder of Thomas, Duke of Gloucester, by smothering him between two feather-beds at Calais, was taken by Sir Walter Clopton, who had been Chief Justice of the King's Bench in the reign of Richard II., and that the same Sir Walter Clopton was summoned to parliament the following year. But all this is consistent with his having been removed to an

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A.D. 1400.

Never was the seat of judgment filled by a more upright or independent magistrate. He was likewise celebrated for the soundness of his decisions. The early ABRIDGMENTS swarm with them *; but it is only to an antiquarian lawyer that they now possess any interest. Traits of disinterestedness, fortitude, and magnanimity, showing an enlightened sense of what is fit, and a determination, at every risk and every sacrifice, to do what duty requires, please and edify all future generations. Therefore, although the ashes of Sir William Gascoigne have reposed upwards of four centuries beneath the marble which protects them, and although since his time there has been a complete change of laws and manners, — when we see him despise the frown of power, our sympathies are as warmly excited as by the contemplation of a Holt or a Camden.

A.D. 1405.

The first recorded instance of an independent spirit being displayed by him, to the wonder of his contemporaries, was when he attended Henry IV. to the north, to assist in putting down an insurrection, planned by Scrope the Archbishop of York and Thomas Mowbray, son of the banished Duke of Norfolk who had died abroad.† The King, having made these two rebels prisoners, directed Gascoigne, as Chief Justice of England, immediately to sit in judgment upon them, and, by his own authority, to sentence them to death. But, notwithstanding repeated solicitations, he peremptorily refused, saying, "Much am I beholden to your Highness, and all your lawful commands I am bound by my allegiance to obey; but over the life of the prelate I have not, and your Highness cannot give me, any jurisdiction. For the other prisoner, he is a peer of the realm, and has a right to be

His refusal to try a prelate and a peer.

inferior judicial office; and Sir William Gascoigne's opinions as Chief Justice are to be found in the Year-Books from the very commencement of Henry's reign.

* See references to them in Gascoigne's Year-Book, part vi., reign of Hen. IV., and Life in the Biographia Britannica.

† It is a curious fact that the military functions of the Grand Justiciar, although no longer belonging to the Chief Justice of the King's Bench, *virtute officii*, were sometimes specially assigned to him. Thus, in the rebellion of the Percys, two years before, Chief Justice Gascoigne had been sent to quell it, fortified with a commission of array, which empowered him to raise forces in the northern counties. The authority to press into the service, extends to "persons of what state, degree, or condition whatsoever."—*Rym. Fœd.* vol. viii. 319.

tried by his peers." A more obsequious agent was found in Sir William Fulthorpe, a worthless Puisne Judge, who, in the hope of seeing Gascoigne disgraced, and of succeeding to the office of Chief Justice, having placed himself on a high throne in the Archbishop's palace, called both the prisoners before him, and, without indictment, or form of trial, condemned them both to be beheaded. The sentence was immediately carried into execution.* When the Parliament was afterwards called upon to ratify this proceeding, the Lords said it demanded inquiry and deliberation; and the matter was thus laid at rest for ever.† It is pleasing to reflect that Fulthorpe was disappointed in his hope of promotion, and that the virtuous Chief Justice continued to hold his office with increased reputation.‡

A.D. 1405.

Still enjoying the confidence of the King, Gascoigne was employed by him "to treat and compound with, and offer clemency to, the adherents of the Earl of Northumberland; likewise to receive their fines, and pay them into the Exchequer."§ At last, all the attempts of the discontented Barons were effectually defeated, and Henry's throne was as firmly established as if it had been based on hereditary right.

A.D. 1408.

His chief anxiety now arose from the irregularities of his son, the Prince of Wales, who, having distinguished himself by military skill and bravery in the early part of the reign, had subsequently abandoned himself to dissipation, and had consorted not only with buffoons, but with persons accustomed to minister to their profligate expenses by forced contributions from travellers on the highways.

These excesses led to an event which drew great applause upon the Prince himself, on the King, and still more on Lord Chief Justice Gascoigne. But I must begin by showing that this is not a poetical fiction. Formerly, every thing recorded by historians was believed; now, every thing is denied or

* Rymer's Fœd. vol. viii. 319.

† A leprous disease, which soon after attacked the King, was supposed to be a visitation of Heaven upon him for the violent death of the Archbishop; while Judge Gascoigne received many blessings for refusing to be concerned in this sacrilege. — Stow's Annals, fol. 333.; Mayd. Hist. Marty.; Richard Scrope, Aug. Sac. vol. ii. 370.

‡ Rot. Parl. iii. 606., viii. 605.; Wals. 373.; Hall, ii. 310.

§ Rymer's Fœd. vol. viii. 520.

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doubted; and the fact of the commitment of the Prince of Wales, afterwards Henry V., to the King's Bench prison, long considered as authentic as his victory at Agincourt, has lately been referred to the same class of narrative as the landing of King Brute after the siege of Troy, or the exploits of King Arthur and the knights of the Round Table.*

A.D. 1410—1412. Story of his committing the Prince of Wales to prison: qu. whether it be authentic?

The only ground on which this scepticism rests is, that the story cannot be pointed out in any written composition given to the world till rather more than a century after Sir William Gascoigne's death. The objection would have been very strong if in his lifetime there had been newspapers, magazines, annual registers, and memoirs, detailing all the proceedings of courts of justice, and all the occurrences of political and private life, which can be interesting to any class of readers. Even in that case, a little consideration should be had of the probable unwillingness to proclaim to all mankind anecdotes discreditable to the heir apparent; and certainly several respecting George IV. when Prince of Wales, which have not as yet appeared in print, have been circulated in society, and may hereafter be related by grave historians. But during the fifteenth century,—although, from the Close Roll, the Pell Roll, and the Parliament Roll, we have minute information of the appointment of judges, the assembling and prorogation of parliaments, and other such matters as were considered "of record,"—many interesting events, the universal subjects of conversation when they occurred, long rested on tradition, and were orally transmitted by one generation to another, till a chronicler arose, who embraced the period to which they were ascribed, and who related them substantially as they happened, although he might be chargeable with some inaccuracy or exaggeration.

When and where first mentioned.

The first book in which there is an account of the imprisonment of Henry the Prince of Wales by Sir W. Gascoigne was printed in the year 1534; but no intervening writer could reasonably have been expected to relate it. We should remember that, during a great portion of this period, literature, which had made wonderful progress for half a century

* See Tyler's Life of Henry V., vol. i. c. 16.

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before, was nearly extinguished by the War of the Roses, and that Sir Thomas More's History (ascribed by some to Cardinal Morton), the only historical work in the English language previously published, begins with the reign of Edward V.

Sir Thomas Elyot, who thus narrates the transaction in his work entitled "THE GOVERNOR," dedicated to King Henry VIII., was no romancer, but introduces it as a true statement of facts, among other historical anecdotes which cannot be questioned: —

Story as related by Sir Thomas Elyot.

"The moste renouned prince king Henry the fyfte, late kynge of Englande, durynge the lyfe of his father, was noted to be fiers and of wanton courage: it hapned, that one of his seruauntes, whom he fauoured well, was, for felony by him committed, arrained at the kynges benche: whereof the prince being aduertised and incensed by lyghte persones aboute him, in furious rage came hastily to the barre where his seruante stode as a prisoner, and commaunded him to be vngyued and set at libertie: whereat all men were abashed, reserved the chiefe Justice, who humbly exhorted the prince to be contented, that his seruaunt mought be ordred, accordynge to the aunciente lawes of this realme: or if he wolde haue hym saued from the rigour of the lawes, that he shulde obteyne, if he moughte, of the kynge his father, his gratious pardon, wherby no lawe or justyce shulde be derogate. With whiche answere the prince nothynge appeased, but rather more inflamed, endeuored hym selfe to take away his seruant. The iuge considering the perillous example and inconuenience that mought therby ensue, with a valyant spirite and courage, commanded the prince vpon his alegeance, to leave the prisoner, and depart his way. With which commandment the prince being set all in a fury, all chafed and in a terrible maner, came vp to the place of iugement, men thynking that he wold haue slayne the iuge, or haue done to hym some damage: but the iuge sittynge styll without mouing, declaring the maiestie of the kynges place of iugement, and with an assured and bolde countenaunce, had to the prince these wordes followyng:

"'Syr, remembre yourselfe, I kepe here the place of the kyng your soueraine lorde and father, to whom ye owe double obedience: wherfore eftsoones in his name, I charge you desyste of your wylfulnes and vnlaufull enterprise, & from hensforth giue good example to those, whyche hereafter shall be your propre

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A.D. 1410—1412.

subjectes. And nowe, for your contempte and disobedience, go you to the prysone of the kynges benche, wherevnto I commytte you, and remayne ye there prysoner vntyll the pleasure of the kynge your father be further knowen.'

"With whiche wordes being abashed, and also wondrynge at the meruaylous gravitie of that worshypfulle justyce, the noble prince layinge his weapon aparte, doying reuerence, departed, and wente to the kynges benche, as he was commanded. Whereat his servauntes disdaynynge, came and shewed to the kynge all the hole affaire. Whereat he awhyles studyenge, after as a man all rauyshed with gladnes, holdynge his eien and handes vp towarde heuen, abraided, saying with a loude voice, 'O mercifull God, howe moche am I, aboue all other men, bounde to your infinite goodnes, specially for that ye haue gyuen me a iuge, who feareth nat to minister iustyce, and also a sonne, who can suffre semblably, and obeye iustyce!'"

Hall, whose Chronicle was published at the commencement of the reign of Edward VI., gives another version of the story, varying as to some particulars—in the same manner as he might vary from other writers in relating the Battle of Bosworth. Says he—"For imprisonment of one of his wanton mates and unthrifty playfaires, the Prince strake the Chief Justice with his fist on his face; for which offence he was not only committed to streight prisone, but also of his father put out of the privie council and banished the court."*

I next call as witnesses two lawyers, very dull, but very cautious, men, Sir Robert Catlyne, Chief Justice of the King's Bench, and Sir John Whiddin, a Puisne Judge of that Court, in the beginning of the reign of Queen Elizabeth, who, sticking to the YEAR-BOOKS, probably had never read either Elyot or Hall, and who knew nothing of Gascoigne except by the sure traditions of Westminster Hall. Crompton, an accurate juridical writer, who then published a book entitled "Authoritie et Jurisdiction des Courts," in reporting a decision of the Court of King's Bench, says,—

"Whidden cites a case in the time of Gascoigne, Chief Justice of England, who committed the Prince to prison because he would have taken a prisoner from the bar of the King's Bench; and he, very submissively obeying him, went thither, according to order:

* 4th ed. p. 46.

CHAP. III.

A.D. 1410 —1412.

at which the King was highly rejoiced in that he had a Judge who dared to minister justice upon his son the Prince, and that he had a son who obeyed him."

Catlyne C. J. is then represented as assenting and rejoicing in the praises of his predecessor.*

Represented on the stage.

The drama making rapid progress, and historical plays coming into fashion, there was soon after produced a very popular piece, with the title of "Henry the Fyfte, his Victories, containing the honorable battle of Agincourt, &c." The first act exhibits many of his pranks while he was Prince of Wales, with the scene between him and Chief Justice Gascoigne. The author follows Hall in supposing that a blow had actually been inflicted, — which I make no doubt was an exaggeration. Of one of the representations of this play we have a very amusing account in a book entitled "TARLETON'S JESTS," published in the reign of James I. The famous comedian of that name, who died in 1592, had been long the delight of the public in the part of the "Clown," — disregarding the precept to "speak no more than was set down for him." But, though this was his *forte,* he could, on a pinch, take a graver character, and personate a Ghost or a Judge. It so happened that when "Henry the Fyfte" had drawn a crowded house, it was discovered that Lord Chief Justice Gascoigne had got so excessively drunk that he could not take his place upon the bench, and Tarleton agreed to "sit for him," still retaining his own part of the Clown, who, luckily, was not to appear in the presence of his lordship. The author, after intimating the difficulty into which the company had been thrown, and the expedient resorted to, thus proceeds: —

"In this play the judge on the bench was to receive a blow of Prince Henry, who was represented by one Knoll, another droll comedian of those times; and, when it was to be done, he struck the Chief Justice Tarlton such a swinging box on the ear as almost felled him to the ground, and set the whole house in an uproar of merriment. When 'Tarlton the Judge' went off, pre-

* 4th ed. 1594, p. 79. "Whidden vouche un case en temps Gascoign Chief Justice D'Englitierr, que commit le Prince (que voile aver pris un prisoner del barre in Banco Regis) al paison; que luy obey humblement, et ala auxi a son commandment; in que le Roy grandement rejoice in ceo quil avoit Justice que osast minister justice a son fits le Prince et que il avoit Fits que luy obey."

CHAP. III.

A.D. 1410—1412.

sently after entered 'Tarlton the Clown;' and, according to that liberty wherewith the players in those days were indulged, of intruding interrogatories of their own in the midst of their acting, he very simply and unconcernedly asked the occasion of that laughter, like one who was an utter stranger to it. 'O,' said another of the actors, 'hadst thou been here thou hadst seen Prince Henry hit the Judge a terrible box on the ear.' 'What! strike a Judge!' quoth Tarlton. 'Nothing less,' said t'other. 'Then,' replied he, 'it must be terrible to the Judge, since the very report of it so terrifies me, that methinks the place remains so fresh still on my cheek that it burns again.' This, it seems, raised a greater acclamation in the house than there was before; and this was one example of that extempore wit or humour for which Tarlton was so much admired and remembered many years after his death."

How the story is treated by Shakspeare.

The case which I advocate is, I think, materially strengthened by the evidence of WILLIAM SHAKSPEARE, who, in his historical plays, although very careless about dates, is scrupulously accurate about facts, and never introduces any which do not rest upon what he considered good authority; insomuch that our notions of the Plantagenet reigns are drawn from him rather than from Hollinshed, Rapin, or Hume. On the faith of tradition, or of books which he had read, he evidently had in the truth of the story a strong belief, which is constantly breaking out. Thus, when the Chief Justice is first seen at a distance, Falstaff's page says, "Sir, here comes the nobleman that committed the Prince for striking him about Bardolph."*

Again, on news arriving of the death of Henry IV., we have the following dialogue:—

Ch. Justice. "I would his majesty had called me with him:
The service that I truly did his life
Hath left me open to all injuries."
Warwick. "Indeed, I think the young King loves you not."
Ch. Justice. "I know he doth not; and do arm myself
To welcome the condition of the time;
Which cannot look more hideously upon me
Than I have drawn it in my fantasy.
Sweet princes, what I did I did in honour,
Led by the impartial conduct of my soul;
And never shall you see that I will beg
A ragged and forestall'd remission.

* Second Part of Henry IV. act i. sc. 2.

If truth and upright innocency fail me,
I'll to the King my master that is dead,
And tell him who hath sent me after him."

When the Prince enters, as Henry V., he thus addresses the Chief Justice: — A.D. 1410 —1412.

"You are, I think, assur'd I love you not."

Ch. Justice. "I am assur'd, if I be measur'd rightly,
Your Majesty hath no just cause to hate me."

King. "No!
How might a prince of my great hopes forget
So great indignities you laid upon me?
What! rate, rebuke, and roughly send to prison
The immediate heir of England! Was this easy?
May this be wash'd in Lethe, and forgotten?"

Ch. Justice. "I then did use the person of your father;
The image of his power lay then in me:
And, as you are a king, speak in your state,
What I have done that misbecame my place,
My person, or my liege's sovereignty."

King. "You are right, Justice, and you weigh this well;
Therefore, still bear the balance and the sword:
And I do wish your honours may increase,
Till you do live to see a son of mine
Offend you, and obey you, as I did." *

It was imagined that the authority of Shakspeare on this question was demolished, and a great triumph was claimed over him by the assertion that Sir William Gascoigne at this time could not feel any apprehension of the earthly consequences of any deed he had done in the body, as he was sleeping in his grave, having died some months before his patron, Henry IV.; but I shall hereafter prove to demonstration that Sir William Gascoigne survived Henry IV. several years, and actually filled the office of Chief Justice of the King's Bench under Henry V.†

In the same reckless spirit of questioning what has long been taken for implicit truth, several who were not bold

* Second Part of Henry IV. act v. sc. 2.

† Henry V., having become King by his father's death on the 20th of March, 1413, was crowned on the 9th of April following; and all historians, chroniclers, and biographers, agree that the following day, when his council was sworn in (for still the Kings of England were not considered as fully entitled to rule before their coronation), he made a speech in which he renounced his former lewd companions, he forgave his father's councillors who had offended him by trying to correct his faults, and he reappointed such of the judges as had best done their duty, and were most in his father's confidence. — See Wals. 382.; Otterb. 273.; Elm. 16. Trussell's Continuation of Daniel introduces Gascoigne's name, and makes Henry, after relating the commitment, thus conclude: "For which act of justice I shall ever hold him worthy of the place and my favour, and wish all my judges to have the like undaunted courage to punish offenders of whatever rank." — Cited in Fuller's Worthies, 505.

CHAP. III.

A.D. 1410—1412. Refutation of the claims of other Judges.

enough to deny that Henry V., when Prince of Wales, was committed to prison, have denied the honour of the act to Sir William Gascoigne, and have started other candidates for it. The "Devonians," who think that nothing great or good can have been done in England unless by a "worthy of Devon," taking advantage of the language of chroniclers who, trusting to the notoriety of the story, mentioned the judge only under the designation of the "Chief Justice," claim the commitment of the Prince of Wales for two of their countrymen, Chief Justice Hankford and Chief Justice Hody.* When I hear of high Devonian pretensions, I confess I am reminded of the celebrated saying of Serjeant Davy, that "the oftener he went into the West, he better understood how the WISE MEN came from the East." In this instance it is quite certain that the pretension proceeds on gross ignorance and carelessness, for Sir William Hankford was not appointed Chief Justice of the King's Bench till some time after Henry V. had actually been on the throne, and (better still) Sir John Hody was not appointed Chief Justice of the King's Bench till many years after Henry V. had been in his grave, viz. the eighteenth year of the reign of his son and successor, Henry VI.†

The same impossibility does not stand in the way of a claim set up for Sir John Markham by his descendants, on the strength of some supposed family papers which have not been communicated to the public. He was a Chief Justice from the 20th of Richard II. to 9th Henry IV.; but then he was Chief Justice of the Common Pleas, and, although the commitment is sometimes said to have been to the Fleet —the prison of that Court—it is quite clear that no arraignment of Bardolph, or any other associate of the Prince, could have taken place in the Court of Common Pleas, which has cognizance only of civil actions.‡

I think I am now fully entitled to ask for a verdict in favour of my client, Sir William Gascoigne. For the honor

* Prince's Worthies of Devon; Risdon's Worthies of Devon.

† Dudgd. Chron. Ser.

‡ Baker's Chronicle says, that the commitment was to the Fleet, but at the same time says that the arraignment of the Prince's servant, which gave rise to it, was at the King's Bench bar.

A.D. 1410 —1412.

Merit of Sir W. Gascoigne in this transaction.

of the profession to which I am proud to belong, I do feel anxious to establish the fact which has been taken for true by so many chroniclers, historians, moralists, and poets.

There was here no official insolence, or strain of jurisdiction, for the sake of gaining popularity. Independently of the *blow*, which may be safely disbelieved, as inconsistent with the generous feeling by which Henry was actuated in his wildest moments, — he had insulted the first Criminal Judge, sitting on his tribunal, — and he had no privilege from arrest beyond that of a peer — which did not extend to such an enormity. But there had been no precedent, in the history of this or any other European monarchy, of a Temporal Judge, with delegated authority, for an insult offered to himself, sending to gaol the son of the Sovereign, who must himself mount the throne on his father's death, — to be detained there in a solitary cell, or to associate with common malefactors. We must remember that Gascoigne held his office *during pleasure*, and that, while by this act there seemed a certainty of his being dismissed, and made an object of royal vengeance, on a demise of the Crown, — there was a great danger of his incurring the immediate resentment of the reigning Sovereign, who might suppose that the divinity which ought to hedge the blood royal had been profaned. Every thing conspires to enhance the self-devotion and elevation of sentiment which dictated this illustrious act of an English Judge; and the noble independence which has marked many of his successors may, in no small degree, be ascribed to it: —.

> "While dauntless Gascoigne, from the judgment-seat,
> To *justice* does make princely *power* submit,
> Dares tame by law him who all laws could break,
> And to a hero raise a royal rake:
> While we such precedents can boast at home,
> Keep thy Fabricius and thy Cato, Rome!" *

Shakspeare, who, although adhering to substantial facts, in dramatising English history, never minds anachronisms, even with respect to events that had happened very shortly before his own time †, represents the commitment of the Prince of Wales by Chief Justice Gascoigne to have been

* See Biog. Britan., title "Gascoigne."

† The play of King Henry VIII. abounds with them.

CHAP. III.

A.D. 1410—1412.

before the insurrection led by Archbishop Scrope in the year 1405; but other authorities place it, with more probability, in the latter part of the reign of Henry IV., when the Prince had taken to dissolute courses from want of public employment, and had been dismissed from the Privy Council,—making way for his graver brother, John.*

Sir William Gascoigne's law reforms.

We do not read of any other remarkable achievement of the Chief Justice, except as a law reformer. There were heavy complaints in the House of Commons—which have continued down to our own time—that exorbitant fees were levied upon litigants by the officers of the different Courts. In consequence, Gascoigne instituted an inquiry upon the subject, and, with the concurrence of the other Judges, published a table of such fees as might be legally demanded.† A more general grievance was stated to be the multiplication of attorneys. In the reign of Edward I. there were only 140 in all England, and their number now exceeded 2000. This was a proof of increasing population, wealth, and civilisation; but a general cry arose "that the people were pilled by barrators and pettifoggers;" and there was, no doubt, a want of regulations to prevent the admission of improper persons into the profession, and to punish those who acted discreditably. To meet these evils, Chief Justice Gascoigne framed a statute, which was adopted by the legislature,—whereby attorneys were subjected to an examination before they were admitted; and, if convicted of any fraud, "should never after be received to make any suit in any Court of the King."‡ He likewise, with the assent of his brethren, promulgated a rule of Court that attorneys should be sworn every term "to deal faithfully, and make their ransom to the King's will."

* See Hume, vol. iii. p. 86.; Lingard, vol. iv. 319., vol. v. 2. Cotton's Records, p. 409.

† 4 Hen. IV. c. 18. The preamble (no doubt drawn by Gascoigne) affords a curious specimen of legislative language in those days:—"Item pur pleusours damages et meschiefs quont advenuz devaunt ces heures as diverses gentz. du Roialme par le grant nombre des attournees nient sachantz naprises de la loye come ils soloient estre pardevant; ordeignez est et estabiliz que toutz les attournees soient examinez par lez Justices," &c.

‡ Till the stat. West. 2. c. 10., allowing attorneys to be made to prosecute and defend an action, every suitor was obliged to appear in person, unless by special licence under the King's letters patent.—3 *Bl. Com.* 26.

CHAP. III.

A.D. 1412.

Besides administering justice to the parties who came regularly before his tribunal by judicial process, Gascoigne followed a practice which continued in use among Judges of the highest rank, down to the time of Sir Matthew Hale, in the reign of Charles II., of settling differences privately by arbitration, on the voluntary submission of the parties. We are minutely informed of the circumstances of one case thus referred to him, illustrating graphically the manners of the age:—

Curious case in which he acted as an arbitrator.

"William Lord Roos complained to the King of Sir Robert Therwit, a Puisne Judge of the King's Bench, for not only unjustly depriving him of certain lands in the county of Lincoln, but for lying in wait with 500 men to seize and ill use him. Sir Robert confessed his fault in using such violent means to assert his right, and offered to abide by the order of two Lords of the complainant's own kindred as to the mode of settling the dispute. They enjoined Sir Robert to make a great feast at Melton le Roos, the scene of the riot; that he should prepare two fat oxen, twelve sheep, two tuns of Gascogny wine, with other suitable provisions, and then assemble thither all such knights, esquires, and yeomen as had been his accomplices; that they should confess their misbehaviour to the Lord Roos, crave his pardon, and make him an offer of 500 marks in recompence; that the Lord Roos should refuse their money, but pardon them, and partake of their dinner in token of his reconciliation; *and that the title to the land should be settled by that learned and revered Judge*, Sir William Gascoigne. We are not told what his award was; but we need not doubt that it did ample justice between the parties."*

Refutation of the assertion that he died in the reign of Henry IV.

Having narrated all that I find interesting in the life of Lord Chief Justice Gascoigne, I have only to discuss the controverted question respecting the time of his death. Fuller (generally a trustworthy authority) fixes it on Sunday the 17th day of December, 1412,—vouching an inscription on the Judge's tomb;—and this date was long considered as irrevocably fixed,—writer after writer pointing out the flagrant violation of history by Shakspeare, in bringing the deceased Chief Justice on the stage along with King Henry V., and recording a dialogue between them.†

* Cotton's Records, anno 1411.

† See Gentleman's Magazine, vol. xi. p. 516.

CHAP. III.

A.D. 1412—1419.

But a difficulty arose from the 17th of December, 1412, having fallen not on a Sunday but on a Saturday. Then came a discovery, that in the summonses for a new parliament issued by Henry V. on the 22d of March, 1413, the day after he was proclaimed King, is found one to "Sir William Gascoigne, Knight, Chief Justice of our Lord the King, assigned to hold pleas before our Lord the King before the King himself." But as his name is not mentioned in the roll of the proceedings of the House of Lords, when Parliament met in the month of May following, it was supposed that this summons must be a mistake; and an assertion was made, that Sir William Hankford, his successor, had previously been appointed Chief Justice. Some who could not believe that the date 1412 was right, carried it on to 1413, when the 17th of December did fall on a Sunday; but still insisted, that Gascoigne never was Chief Justice of the King's Bench under Henry V., and that, being displaced on the demise of Henry IV., the story of his having committed the Prince of Wales to prison could receive no confirmation from the dialogue at his supposed reappointment.

His will.

The matter, however, has been placed beyond all doubt by the discovery of the Chief Justice's last will and testament, in the registry of the Ecclesiastical Court at York. It bears date, according to the mode then in fashion of computing time, which Puseyites wish to revive, on "Friday after St. Lucy's Day, A. D. 1419." St. Lucy's Day that year fell on Wednesday, 13th of December; and, consequently, the will was made on Friday, the 15th of December. Probate was granted on the 23d of the same month. Consequently, the Chief Justice must have died on the 17th of December, 1419, which was that year again on a Sunday. The testator declares, that he was "weake in bodie, though of sounde and disposing minde and understanding."*

We must, therefore, inevitably come to the conclusion,

* He does not designate himself as "late Chief Justice," but the identity of the testator with the Chief Justice is placed beyond all doubt by his mention of different members of his family, and particularly of his two wives; the latter of whom was then alive, and in her will, subsequently made and preserved in the same register, styles herself "widow of William Gascoyne, late Chief Justice." —See Tyler's Life of Henry V. vol. i. p. 376.

that Sir William Gascoigne did survive Henry IV., that he was reappointed by Henry V., and that he was summoned as Chief Justice of the King's Bench to the first parliament of that monarch. The probability is, that soon afterwards, either being struck by some disease, or weakened by the infirmities of age, he voluntarily resigned his office, and spent his last years in retirement, preparing for the awful change which awaited him.

On withdrawing from the Bench, he must have carried with him the respect of the profession and the public: and we know that he was still treated with courtesy and kindness by his young Sovereign; for there is now extant a royal warrant, dated 28th November, 1414, the year after his retirement, granting to "our deare and well-beloved William Gascoigne, Knt., an allowance, during the term of his natural life, of four bucks and four does every year out of our Forest of Pontifract." *

He had an ample patrimonial estate to retire upon; and to such an extent had he increased his riches, that he lent large sums of money to the King. †

He was buried in the parish church of Harwood in Yorkshire, near Gawthorp.

His tomb and epitaph.

A tomb was afterwards erected there to his memory, which represents him in a kneeling posture, in his Judge's robes, with a large purse tied to his girdle, a long dagger in his right hand, and his wives kneeling on either side of him. ‡ A brass plate, affixed to it, bears an inscription, of which the following words are still legible: —

"Orate pro Gulielmo Gascoyne et Elizabethe et Johannæ uxoribus ejus
Hic jacet Gulielmus Gascoyne nuper Capitalis Justiciar. de Banco Henrici nuper Regis Angl.
Obiit Die Dominica 17 Die. A.D. ——." §

The rest of the brass plate is wanting, and is said to have been torn off by one of Cromwell's soldiers during the civil wars.

* See Tyler's Life of Henry V. vol. i. 379.

† The Pell Roll, 14th May, 1420, within half a year of his death, states the repayment to his executors of a sum which he had advanced without security to the Royal Exchequer.

‡ There is a good portrait of him from the monument, in the Gentleman's Magazine, vol. xli. p. 566.

§ The Gentleman's Magazine, vol. xli. p. 623., professes to give this inscription, but interpolates, after "A. D.", "1412, 14 Hen. Quatre."

CHAP. III.

His wife Elizabeth was the daughter and sole heiress of Sir Alexander Mowbray, of Rutlington, in the county of York; and his wife Joan was the daughter of Sir William Pickering, and relict of Sir Ralph Greystoke, one of the Barons of the Exchequer. By both of them he had a numerous issue; and several great families, still flourishing, trace him in their line. His eldest son, Sir William Gascoigne of Gawthorpe, was one of Henry V.'s best officers, and gained high distinction, not only in the Battle of Agincourt, but in the subsequent campaigns of Bedford and Talbot.

I must confess that I am proud of Sir William Gascoigne as an English Judge, and reluctant to bid him adieu for others of much less celebrity and much less virtue.

CHAPTER IV.

CHIEF JUSTICES TILL THE APPOINTMENT OF CHIEF JUSTICE FITZJAMES BY KING HENRY VIII.

CHAP. IV.

A.D. 1413.

Sir William Hankford.

SIR WILLIAM HANKFORD, the next Chief Justice of the King's Bench, although he was eminent in the law during three reigns, is hardly recollected for any thing he did in his lifetime, exept the ingenious and successful manner in which he plotted his own death. He is one of the "Worthies of Devon" for whom his countrymen claim the merit of having committed the Prince of Wales to prison; and he certainly was born at Amerie in that county, whatever may be the share of glory which he confers upon it. Till the termination of his career, all that I can relate respecting him on authentic testimony is, that he was called serjeant in the 14th of Richard II., was made a Puisne Judge of the Common Pleas in 21st of Richard II., was promoted to be Chief Justice of the King's Bench in 1st of Henry V. *, and was reappointed to that office in 1st of Henry VI. †

His ingenious suicide.

He had been a well-conducted man, but he was of a melancholy temperament, and he became tired of life, notwithstanding the high position which he occupied, and the respect in which he was held. He wished to shuffle off this mortal coil, but he was afraid to commit suicide in any vulgar way, at a time when a verdict of *felo de se* always followed such an act, and the body of the supposed delinquent was buried in a cross road with a stake thrust through it. He at last resorted to this novel expedient, by which he hoped not only that the forfeiture of his goods would be saved, but that his family would escape the anguish and the shame arising from

* There is some doubt as to the exact date of this promotion. It must have been subsequent to 22d March 1413, when Henry V. issued writs for his first parliament, to which Sir William Gascoigne was summoned; and prior to 1st December 1413, for on that day writs were issued for a new parliament to meet on the 29th of January following, and to this Sir William Hankford is summoned as Chief Justice.

† Dugd. Chr. Ser.

CHAP. IV.

A.D. 1422 —1442.

the belief that he had fallen by his own hand. Several of his deer having been stolen, he gave strict orders to his keeper to shoot any person met with in or near the park, at night, who would not stand when challenged. He then, in a dark night, threw himself in the keeper's way, and, refusing to stand when challenged, was shot dead upon the spot. "This story" (says Prince, the author of WORTHIES OF DEVON *) "is authenticated by several writers, and the constant traditions of the neighbourhood; and I, myself, have been shown the rotten stump of an old oak under which he is said to have fallen, and it is called HANKFORD'S OAK to this day."

His monument and epitaph.

His monument stands in Amerie church, with the following epitaph inscribed upon it: —

> "Hic jacet Will. Hankford, Miles, quondam Capitalis Justiciarius Domini R. de Banco, qui obiit duodecimo Die Decembris Anno Domin. 1422."

His figure is pourtrayed kneeling; and out of his mouth, in a label, these two sentences proceed: —

1. "Miserere mei Deus, secundum magnam misericordiam tuam!
2. "Beati qui constodiunt judicium et faciunt justitiam omni tempore."

Fuller, in a true Christian spirit, adds: "No charitable reader, for one unadvised act, will condemn his memory, who, when living, was habited with all requisites for a person of his place." †

Obscure Chief Justices passed over.

During the reign of Henry V., the nation, intent on the conquest of France, paid little attention to the administration of justice or domestic policy, and for the first twenty years of the reign of Henry VI. the office of Chief Justice of the King's Bench continued to be held by very obscure men,— Sir William Cheyne ‡, Sir John Ivyn §, and Sir John Hody ‖, — who seem decently to have discharged their judicial duties, without gaining distinction either by decisions or law reforms, and without mixing in any of the political struggles which agitated the country. The reader will therefore wil-

* Page 362.

† Fuller, i. 281.

‡ 21st January, 1424–5.

§ 20th January, 1439–40.

‖ 13th April, 1440. It would seem that in his time the judges' salaries had been thought to require an increase, as we meet with this entry: "Johannes Hody Capitalis Justic. habet CXL. marcas annuas sibi concessas, ad statum suum *decentius* manutenendum."— Pat. 18 Henry VI. p. 3. m. 5.

lingly excuse me from inquiring into their birth, their education, their marriages, and their places of sepulture. CHAP. IV.

A.D. 1442. Sir John Fortescue.

Next comes one of the most illustrious of Chief Justices, Sir John Fortescue*, for ever to be had in remembrance for his judicial integrity, and for his immortal treatise DE LAUDIBVS LEGVM ANGLIÆ. But, as he held the Great Seal of England while in exile, although he never filled the "marble chair" in Westminster Hall, I have already sounded his praise to the best of my ability in the LIVES OF THE CHANCELLORS.†

He held the office of Chief Justice above twenty years with universal applause. During the latter half of this period the War of the Roses was raging; and he, being a devoted Lancastrian, not only sat in judgment on Yorkists when indicted before him, but valiantly met them in the field. At last, after the fatal battle of Towton, where he fought by the side of Morton, afterwards Archbishop of Canterbury, he fled into Scotland, and, Edward IV. being placed on the throne, he was superseded by a Yorkist Chief Justice. This was SIR JOHN MARKHAM‡, of whom some particulars are known which may not be uninteresting.

March, 1461.

Sir John Markham.

He was descended from an ancient family (the Markhams of that ilk) who had been seated at Markham in Nottinghamshire from time immemorial, possessing a small estate which had remained without addition or diminution for many generations. John, born in the reign of Henry IV., not contented to plough his paternal acres without being (although entitled to coat armour) more wealthy than yeomen and merchants who lived near him, determined to eclipse his ancestors by following the law, which was now becoming the highway to riches and distinction. Having been called to the bar when very young, by great industry, joined to great sharpness, he soon got into extensive practice, and began to realise the prospects which had dazzled him when a boy. In the year 1444 he was placed at the head of his profession by being made King's Serjeant, and soon after accepted the office of a Puisne Judge of the Court of King's

His professional progress.

* 25th Jan. 1442–3.
† Vol. i. ch. xxii.
‡ 13th May, 1462.

CHAP. IV.

A.D. 1442—1462.

Bench, probably hoping ere long to reach the dignity of a chiefship. Such hopes, however, are often delusive. He remained a *puisne* nineteen years, and would have died a *puisne* but for the civil war which broke out respecting the right to the crown. He took, very honestly, a different view of the controversy from his chief, Sir John Fortescue, who had actually written pamphlets to prove that Richard II. was rightfully deposed, that Henry IV. had been called to the throne by the estates of the kingdom and the almost unanimous voice of the people, and that now, in the third generation, the title of the House of Lancaster could not be questioned by any reasonable politician or any good citizen.

He is a Puisne Judge.

Markham did not venture to publish any thing on the other side, but in private conversation, and in "moots" at the Temple, such as that in which the white and red roses were chosen as the emblems of the opposite opinions, he did not hesitate to argue for indefeasible hereditary right, which no length of possession could supersede, and to contend that the true heir of the crown of England was Richard, Duke of York, descended from the second son of Edward III. His sentiments were well known to the Yorkist leaders, and they availed themselves of the legal reasoning and the historical illustrations with which he furnished them. He never sallied forth into the field, even when, after the death of Richard, the gallant youth his eldest son displayed the high qualities which so wonderfully excited the energies of his partisans. However, when Henry VI. was confined as a prisoner in the Tower, and Fortescue and all the Lancastrian leaders had fled, Markham was very naturally and laudably selected for the important office of Chief Justice of the King's Bench. Although he was such a strong *Legitimist*, he was known not only to be an excellent lawyer, but a man of honourable and independent principles. The appointment, therefore, gave high satisfaction, and was considered a good omen of the new *régime*.

He is appointed Chief Justice of the King's Bench.

He held the office above seven years, with unabated credit. Not only was his hand free from bribes, but so was his mind

from every improper bias. An old author relates the following anecdote, to illustrate his purity and his good humour: — CHAP. IV.

"A lady would traverse a suit of law against the will of her husband, who was contented to buy his quiet by giving her her will therein, though otherwise persuaded in his judgment the cause would go against her. This lady, dwelling in the shire town, invited the Judge to dinner, and (though thrifty enough herself) treated him with sumptuous entertainment. Dinner being done, and the cause being called, the Judge clearly gave it against her. And when, in passion, she vowed never to invite Judge again, 'Nay, wife,' said he, 'vow never to invite a *just judge* any more.'" * A.D. 1462—1469.

It was allowed that, when sitting on the bench, no one could have discovered whether he was Yorkist or Lancastrian; the adherents of the reigning dynasty complaining (I dare say very unjustly), that, to obtain a character for impartiality, he showed a leaning on the Lancastrian side.†

His conduct on the trial of Sir Thomas Cooke.

At last, though he cherished his notions of hereditary right with unabating constancy, he forfeited his office because he would not prostitute it to the purpose of the King and the Ministers in wreaking their vengeance on the head of a political opponent. Sir Thomas Cooke, who inclined to the Lancastrians, though he had conducted himself with great caution, was accused of treason, and committed to the Tower. To try him, a special commission was issued, over which Lord Chief Justice Markham presided, and the Government was eager for a conviction. But all that could be proved against the prisoner was, that he entered into a treaty to lend, on good security, a sum of 1000 marks, for the use of Margaret, the Queen of the dethroned Henry VI. The security was not satisfactory, and the money was not advanced. The Chief Justice ruled that this did not amount to treason, but was at most misprision of treason. Of this last offence the prisoner being found guilty, he was subjected to fine and imprisonment, but he saved his life and his lands. King Edward IV.

* Fuller, ii. 248.

† Fuller, in praising Fortescue and Markham, says, "These I may call two Chief Justices of the Chief Justices, for their signal integrity; for though the one of them favoured the House of Lancaster, and the other of York, in the titles to the crown, both of them favoured the House of Justice in matters betwixt party and party."

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was in a fury, and, swearing that Markham, notwithstanding his high pretensions to loyalty, was himself little better than a traitor, ordered that he should never sit on the bench any more; and appointed in his place a successor, who, being a *puisne*, had wished to trip up the heels of his chief, and had circulated a statement, to reach the King's ear, that Sir Thomas Cooke's offence was a clear overt act of high treason.* Markham bore his fall with much dignity and propriety, — in no respect changing his principles, or favouring the movement which for a season restored Henry VI. to the throne after he had been ten years a prisoner in the Tower. Fuller says, "John Markham, being ousted of his Chief Justiceship, lived privately but plentifully the remainder of his life, having fair lands by his marriage with an heiress, besides the estate he acquired by his practice and his paternal inheritance."

He is dismissed from his office. 23d Jan. 1470.

His death.

The ex-Chief Justice died some time after the restoration of Edward IV., and was buried in Markham church, a gravestone being placed over his remains, with this simple inscription: —

"Orate pro anima Johannis Markham Justiciarii."

His character.

For ages after his death he was held up as the pattern of an upright judge. Thus Sir Nicholas Throckmorton, when tried before Lord Chief Justice Bromley, in the reign of Elizabeth, said, —

"I would you, my Lord Chief Justice, should incline your judgments rather after the example of your honourable predecessors, Justice Markham and others, which did eschew corrupt judgments, judging directly and sincerely after the law, and in principles in the same, than after such men as, swerving from the truth, the maxim, and the law, did judge corruptly, maliciously, and affectionately." †

Upon the dismissal of Sir John Markham, Edward IV., who no longer showed the generous spirit which had illustrated his signal bravery while he was fighting for the crown,

* Stow says that he lost his office through the Lord Rivers and the Duchess of Bedford: p. 420. Markham's dismissal has been connected with two other celebrated trials for treason in the reign of Henry IV., but it is quite clear that neither of them took place before him. — See 1 St. Tr. 894.; 1 Hale's Pleas of Crown, 115.

† 1 St. Tr. 894.

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and now abandoned himself by turns to voluptuousness and cruelty, tried to discover the fittest instrument that could be found for gratifying his resentments by a perversion of the forms of law, and with felicity fixed upon SIR THOMAS BILLING, who, by all sorts of meannesses, frauds and atrocities,— aided by natural shrewdness, or, rather, low cunning,—had contrived to raise himself from deep obscurity to be a Puisne Judge of the King's Bench; and in that situation had shown himself ready to obey every mandate, and to pander to every caprice of those who could give him still higher elevation. This is one of the earliest of the long list of politico-legal adventurers who have attained to eminence by a moderate share of learning and talent, and an utter want of principle and regard for consistency.

Sir Thomas Billing.

His family and the place of his education are unknown.* He was supposed to have been the clerk of an attorney; thus making himself well acquainted with the rules of practice, and the less reputable parts of the law. However, he contrived (which must have been a difficult matter in those days, when almost all who were admitted at the Inns of Court were young men of good birth and breeding) to keep his terms and to be called to the bar. He had considerable business, although not of the most creditable description; and in due time he took the degree of the coif.

His obscure origin.

A.D. 1450.

His ambition grew with his success, and nothing would satisfy him but official preferment. Now began the grand controversy respecting the succession to the crown; and the claim to it through the House of Mortimer, which had long been a mere matter of speculation, was brought into formidable activity in the person of Richard, Duke of York. Billing, — thinking that a possession of above half a century must render the Lancastrian cause triumphant, notwithstanding the imbecility of the reigning sovereign, — was outrageously loyal. He derided all objections to a title which the nation had so often solemnly recognised; enlarging on the prudence of Henry IV., the gallantry of Henry V., and the

He starts as a Lancastrian.

* Fuller says that he was born in Northamptonshire, and held lands at Ashwell in that county; but is silent both as to his ancestors and descendants, and is evidently ashamed of introducing such a character among "Worthies."

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piety of the holy Henry VI., under whose mild sway the country now flourished, — happily rid of all its continental dependencies. He even imitated the example of Sir John Fortescue, and published a treatise upon the subject; which he concluded with an exhortation "that all who dared, by act, writing, or speech, to call in question the power of Parliament to accept the resignation of Richard II., or to depose him for the crimes he had committed and to call to the throne the member of the royal family most worthy to fill it according to the fashion of our Saxon ancestors, should be proceeded against as traitors." This so pleased Waynflete the Chancellor, and the other Lancastrian leaders, that Billing was thereupon made King's Serjeant, and knighted.

He is made King's Serjeant, A.D. 1458.

A.D. 1460. When the right to the crown was argued, like a peerage case, at the bar of the House of Lords *, Billing appeared as counsel for Henry VI., leading the Attorney and Solicitor General; but it was remarked that his fire had slackened much, and he was very complimentary to the Duke of York, who, since the battle of Northampton, had been virtually master of the kingdom.

We know nothing more of the proceedings of this unprincipled adventurer till after the fall of Duke Richard, when the second battle of St. Alban's had placed his eldest son on the throne. Instantly Sir Thomas Billing sent in his adhesion; and such zeal did he express in favour of the new dynasty, that his patent of King's Serjeant was renewed, and he became principal law adviser to Edward IV. When Parliament assembled, receiving a writ of summons to the House of Lords, he assisted in framing the acts by which Sir John Fortescue and the principal Lancastrians, his patrons, were attainted, and the three last reigns were pronounced tyrannical usurpations. He likewise took an active part in the measures by which the persevering efforts of Queen Margaret to regain her ascendency were disconcerted, and Henry VI. was lodged a close prisoner in the Tower of London.

A.D. 1461. He goes over to the Yorkists.

A.D. 1463.

Sir John Markham, the honourable and consistent Yorkist, now at the head of the administration of the criminal law,

* Lives of Chancellors, vol. i. ch. xxii.

was by no means so vigorous in convicting Lancastrians, or persons suspected of Lancastrianism, as Edward and his military adherents wished; and when state prosecutions failed, there were strong murmurs against him. In these Mr. Serjeant Billing joined, suggesting how much better it would be for the public tranquillity if the law were properly enforced. It would have appeared very ungracious as well as arbitrary to displace the Chief Justice who had been such a friend to the House of York, and was so generally respected. That there might be one Judge to be relied upon, who might be put into commissions of oyer and terminer, Billing was made a Puisne Justice of the Court of King's Bench. He was not satisfied with this elevation, which little improved his position in the profession; but he hoped speedily to be on the woolsack, and he was resolved that mere scruples of conscience should not hold him back.

He is made a Puisne Judge. A.D. 1465.

Being thus intrusted with the sword of justice, he soon fleshed it in the unfortunate *Walter Walker*, indicted before him on the statute 25 Edward III., for compassing and imagining the death of the King. The prisoner kept an inn called the CROWN, in Cheapside, in the City of London; and was obnoxious to the Government because a club of young men met there who were suspected to be Lancastrians, and to be plotting the restoration of the imprisoned King. But there was no witness to speak to any such treasonable consult; and the only evidence to support the charge was, that the prisoner had once, in a merry mood, said to his son, then a boy, "Tom, if thou behavest thyself well, I will make thee heir to the CROWN."

Trials for treason before him.

Counsel were not allowed to plead in such cases then, or for more than three centuries after; but the poor publican himself urged that he never had formed any evil intention upon the King's life,—that he had ever peaceably submitted to the ruling powers,—and that though he could not deny the words imputed to him, they were only spoken to amuse his little boy, meaning that he should succeed him as master of the Crown Tavern, in Cheapside, and, like him, employ himself in selling sack.

Mr. Justice Billing, however, ruled—

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"That upon the just construction of the Statute of Treasons, which was only declaratory of the common law, there was no necessity, in supporting such a charge, to prove a design to take away the natural life of the King; that any thing showing a disposition to touch his royal state and dignity was sufficient; and that the words proved were inconsistent with that reverence for the hereditary descent of the crown which was due from every subject under the oath of allegiance: therefore, if the jury believed the witness, about which there could be no doubt, as the prisoner did not venture to deny the treasonable language which he had used, they were bound to find him guilty."

A verdict of guilty was accordingly returned, and the poor publican was hanged, drawn, and quartered.*

Mr. Justice Billing is said to have made the criminal law thus bend to the wishes of the King and the ministers in other cases, the particulars of which have not been transmitted to us; and he became a special favourite at court, all his former extravagances about cashiering kings and electing others in their stead being forgotten, in consideration of the zeal he displayed since his conversion to the doctrine of "divine right."

He is made Chief Justice of the King's Bench.

Therefore, when the Chief Justice had allowed Sir Thomas Cooke to escape the penalties of treason, after his forfeitures had been looked to with eagerness on account of the great wealth he had accumulated, there was a general cry in the palace at Westminster that he ought not to be permitted longer to mislead juries, and that Mr. Justice Billing, of such approved loyalty and firmness, should be appointed to succeed him, rather than the Attorney or Solicitor General, who, getting on the bench, might, like him, follow popular courses.

23d Jan. 1469–70.

Accordingly, a *supersedeas* to Sir John Markham was made out immediately after the trial of *Rex* v. *Cooke*, and the same day a writ passed the Great Seal whereby "the King's trusty and well-beloved Sir Thomas Billing, Knight, was assigned as Chief Justice to hold pleas before the King himself."

May 1470.

The very next term came on the trial of Sir Thomas

* Baker's Chron. p. 299.; Hale's Pleas of the Crown, vol. i. p. 115.

Burdet. This descendant of one of the Companions of William the Conqueror, and ancestor of the late Sir Francis Burdett, lived at Arrow, in Warwickshire, where he had large possessions. He had been a Yorkist, but somehow was out of favour at court; and the King, making a progress in those parts, had rather wantonly entered his park, and hunted and killed a white buck of which he was peculiarly fond. When the fiery knight, who had been from home, heard of this affair, which he construed into a premeditated insult, he exclaimed, "I wish that the buck, horns and all, were in the belly of the man who advised the King to kill it;" or, as some reported, "were in the King's own belly." The opportunity was thought favourable for being revenged on an obnoxious person. Accordingly he was arrested, brought to London, and tried at the King's Bench bar on a charge of treason, for having compassed and imagined the death and destruction of our lord the King.

The prisoner proved, by most respectable witnesses, that the wish he had rashly expressed was applied only to the man who advised the King to kill the deer, and contended that words did not amount to treason, and that—although, on provocation, he had uttered an irreverent expression, which he deeply regretted — instead of having any design upon the King's life, he was ready to fight for his right to the crown, as he had done before,—and that he would willingly die in his defence.

"Lord Chief Justice Billing left it to the jury to consider what the words were; for if the prisoner had only expressed a wish that the buck and his horns were in the belly of the man who advised the King to kill the buck, it would not be a case of treason, and the jury would be bound to acquit; but the story as told by the witnesses for the Crown was much more probable, for Sovereigns were not usually advised on such affairs, and it had been shown that on this occasion the King had acted entirely of his own head, without any advisers, as the prisoner, when he uttered the treasonable words, must have well known: then, if the words really were as alleged by the witnesses for the Crown, they clearly did show a treasonable purpose. Words merely expressing an opinion, however erroneous the opinion, might not amount to treason; but when the words refer to a purpose, and incite to an

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A.D. 1470.

act, they might come within the statute. Here the King's death had certainly been in the contemplation of the prisoner; in wishing a violence to be done which must inevitably have caused his death, he imagined and compassed it. This was, in truth, advising, counselling, and commanding others to take away the sacred life of his Majesty. If the wicked deed had been done, would not the prisoner, in case the object of his vengeance had been a subject, have been an accessory before the fact? But in treason accessories before the fact were principals, and the prisoner was not at liberty to plead that what he had planned had not been accomplished. Therefore if the jury believed that he had uttered the treasonable wish directed against his Majesty's own sacred person, they were bound to convict him."

The jury immediately returned a verdict of GUILTY; and the frightful sentence in high treason, being pronounced, was carried into execution with all its horrors. This barbarity made a deep impression on the public mind, and, to aggravate the misconduct of the Judge, a rumour was propagated that the late virtuous Chief Justice had been displaced because he had refused to concur in it. After the death of Edward IV., in the famous speech delivered to the citizens of London to induce them to set aside his children, and to have the Duke of Gloucester for their King, the Duke of Buckingham says —

"Your goods were taken from you much against your will, so that every man was to pay, not what he pleased, but what the King would have him; who never was moderate in his demands, always exorbitant, turning forfeitures into fines, fines into ransoms; small offences into misprisions of treason, and misprision into treason itself. We need not give you the examples of it. Burdet's case will never be forgot; who, for a word spoken in haste, was cruelly beheaded. Did not Judge Markham resign his office rather than join with his brethren in passing that illegal sentence on that honest man?"

On this rhetorical authority, Lord Hale, commenting in his PLEAS OF CROWN upon these two cases of Walker and Burdet, for words, observes, "Both were attaint of high treason, and executed, though Markham, Chief Justice, rather chose to lose his place than assent to the latter judgment."*

* Vol. i. p. 115. This sentence is repeated in the text of Blackstone (Com. vol. iv. p. 80.). Hume, to add to the effect of his narrative, thinks fit to connect

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But I believe that Burdet's prosecution had not been commenced till Markham's removal had been caused by his supposed misconduct on the trial of Sir John Cooke.*

Lord Chief Justice Billing, having justified his promotion by the renegade zeal he displayed for his new friends, and enmity to his old associates, was suddenly thrown into the greatest perplexity, and he must have regretted that he had ever left the Lancastrians. One of the most extraordinary revolutions in history — when a long continuance of public tranquillity was looked for — without a battle, drove Edward IV. into exile, and replaced Henry VI. on the throne, after he had languished ten years as a captive in the Tower of London.

Billing again a Lancastrian.

There is no authentic account of Billing's deportment in this crisis, and we can only conjecture the cunning means he would resort to, and the pretences he would set up, to keep his place and to escape punishment. Certain it is, that within a few days from the time when Henry went in procession from his prison in the Tower to his palace at Westminster, with the crown on his head, while almost all other functionaries of the late Government had fled, or were shut up in gaol, a writ passed the Great Seal, bearing date the 49th year of his reign, by which he assigned "his trusty and well-beloved Sir John Billing, Knight, as his Chief Justice to hold pleas in his Court before him." † There can be as little doubt that he was present at the parliament which was summoned immediately after in Henry's name, when the crown was entailed on Henry and his issue, Edward was declared an usurper, his most active adherents were attainted, and all the statutes which had passed during his reign were

Nov. 1470.

this atrocity with the murder of the Duke of Clarence, and postpones it till 1477, nearly eight years after Markham had been displaced, and Billing had been appointed to succeed him.—(Vol. iii. p. 261.) See 1 St. Tr. 275. Burdet had been a retainer of the Duke of Clarence, who very probably reproached Edward IV. with his violent death, but this event must have happened long before the fatal quarrel between the two royal brothers.

* In reference to this case, where the conviction was for *misprision of treason*, the Duke of Buckingham asks, "Were you not all witnesses of the barbarous treatment, one of your own body, the worshipful Alderman Cook, met with? And you your own selves know too well how many instances of this kind I might name among you."—Sir Thomas More's History of Richard III.; Kennet, 498.

† The teste is "apud Westmonasterium, 9 Oct. 49 Henry III."—Pat. Roll, m. 18.

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repealed. It is not improbable that there had been a secret understanding between Billing and the Earl of Warwick (the king-maker), who himself so often changed sides, and who was now in possession of the whole authority of the government.

While Edward was a fugitive in foreign parts, the doctrine of divine right was, no doubt, at a discount in England, and Billing may have again bolted his arguments about the power of the people to choose their rulers; although, according to the superstition of the age, he more probably countenanced the belief that Henry was a Saint, and that he was restored by the direct interposition of Heaven.

A.D. 1471.

But one would think he must have been at his wits' end when, in the spring of the following year, Edward IV. landed at Ravenspurg, gained the battle of Barnet, and, after the murder of Henry VI. and the Prince of Wales, was again on the throne, without a rival. Billing does seem to have found great difficulty in making his peace. Though he was dismissed from his office, it was allowed to remain vacant about a twelvemonth, during which time he is supposed to have been in hiding. But he had vowed that, whatever changes might take place on the throne, he himself should die Chief Justice of the King's Bench: and he contrived to be as good as his word.

Billing again a Yorkist.

By his own representations, or the intercession of friends, or the hope of the good services he might yet render in getting rid of troublesome opponents, the King was induced to declare his belief that he who had sat on the trials of Walker and Burdet had unwillingly submitted to force during the late usurpation; and, on the 17th of June, 1472, a writ passed the Great Seal, by which his Majesty assigned "his right trusty and well-beloved Sir John Billing, Knight, as Chief Justice to hold pleas before his Majesty himself."*

For nearly nine years after, he continued in the possession of his office, without being driven again to change his principles or his party. One good deed he did, which should be recorded of him—in advising Edward IV. to grant a pardon to an old Lancastrian, Sir John Fortescue. But for the pur-

* Pat. Roll, 11 Ed. IV. p. 1. m. 24.; Dugd. Chron. Ser.

pose of reducing this illustrious Judge to the reproach of inconsistency, which he knew made his own name a-by-word, he imposed a condition that the author of DE LAUDIBUS should publish a new treatise, to refute that which he had before composed, proving the right of the House of Lancaster to the throne; and forced him to present the petition in which he assures the King "that he hath so clearly disproved all the arguments that have been made against his right and title that now there remaineth no colour or matter of argument to the hurt or infamy of the same right or title by reason of any such writing, but the same right and title stand now the more clear and open by that any such writings have been made against them."*

A.D. 1473.

There are many decisions of Chief Justice Billing on dry points of law to be found in the YEAR-BOOKS, but there is only one other trial of historical importance mentioned in which he took any part, and it is much to be feared that on this occasion he inflamed, instead of soothing, the violent passions of his master, with whom he had become a special favourite.

Edward IV., after repeated quarrels and reconciliations with his brother the Duke of Clarence, at last brought him to trial, at the bar of the House of Lords, on a charge of high treason. The Judges were summoned to attend; and Lord Chief Justice Billing was their mouthpiece. We have only a very defective account of this trial, and it would appear that nothing was proved against the first prince of the blood, except that he had complained of the unlawful conviction of Burdet, who had been in his service, that he had accused the King of dealing in magic, and had cast some doubts on his legitimacy, — that he had induced his servants to swear that they would be true to him, without any reservation of their allegiance to their Sovereign, — and that he had surreptitiously obtained, and preserved, an attested copy of an act of parliament, passed during the late usurpation, declaring him next heir to the crown after the male issue of Henry VI. The Duke of Buckingham presided as High Steward, and in that capacity ought to have laid down

Jan. 14.

His conduct on the trial of the Duke of Clarence.

* Rot. Parl. vi. 26. 69.

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A.D. 1478.

the law to the Peers; but, to lessen his responsibility, he put the question to the Judges, "Whether the matters proved against the Duke of Clarence amounted, in point of law, to high treason?" Chief Justice Billing answered in the affirmative. Therefore, an unanimous verdict of GUILTY was given; and sentence of death was pronounced in the usual form. I dare say Billing would not have hesitated in declaring his opinion that the beheading might be commuted to drowning in a butt of malmsey wine; but this story of Clarence's exit, once so current, is now generally discredited, and the belief is, that he was privately executed in the Tower, according to his sentence.*

Lord Chief Justice Billing enjoyed the felicitous fate accorded to very few persons of any distinction in those times, — that he never was imprisoned — that he never was in exile — and that he died a natural death. In the spring of the year 1482, he was struck with apoplexy, and he expired in a few days, — fulfilling his vow — for he remained to the last Chief Justice of the King's Bench, after a tenure of office for seventeen years, in the midst of civil war and revolutions.

His death.

He amassed immense wealth, but, dying childless, it went to distant relations, for whom he could have felt no tenderness. Notwithstanding his worldly prosperity, few would envy him. He might be feared and flattered, but he could not have been beloved or respected, by his contemporaries; and his name, contrasted with those of Fortescue and Markham, was long used as an impersonation of the most hollow, deceitful, and selfish qualities which can disgrace mankind.

Sir John Hussey.

SIR JOHN HUSSEY†, who succeeded him, was Chief Justice during four reigns, ever preserving a fair character; — for, being a mere lawyer, he devoted himself exclusively to the duties of his office; and he was promoted to the highest honours of his profession without mixing in any political contest.

He was the younger son of a Lincolnshire family of respectable station, but small means; and he had considerable difficulties to struggle with in early life. But he was en-

* Rot. Par. vi. 193, 194, 195, 174.
† Often spelt Hussee.

dowed with much energy, perseverance, and love of law. His favourite manual was the REGISTRUM BREVIUM; and Littleton's celebrated treatise on TENURES (destined to be commented on by COKE) being now completed, and handed about in MS., he copied it with his own hand, and he is said to have committed it to memory.

His legal studies.

His progress at the bar was rapid; and in 1472, on the restoration of Edward IV. he was made Attorney General.* He had to prosecute a good many Lancastrians; but the proceedings were less bloody than might have been expected, and, without displeasing the King, he gained some credit for moderation and humanity. He had a most painful duty to perform in conducting the impeachment of the Duke of Clarence for treason; but he had no concern in advising this proceeding, and he is not supposed in any part of it to have exceeded the line of his professional duty. If the sentence of beheading was changed to drowning in malmsey, he must have been consulted about it; but there is no record of his opinion on this delicate question.

He is made Attorney General.

It seems strange to us that he should afterwards have taken the degree of the coif; but then, and long afterwards, King's Serjeants had precedence of the Attorney and Solicitor General on all occasions; and all other Serjeants claimed the like precedence, except in conducting the King's business. Hussey, therefore, although Attorney General, to add to his dignity was, in the year 1478, called Serjeant, with ten others, and gave a grand feast to the King, the Lord Mayor, and Aldermen of London, all the Judges, and many of the nobility.

On the death of Lord Chief Justice Billing, Sir William Hussey, who had now for ten years ably filled the office of Attorney General, was appointed to succeed him, with the increased salary of 140 marks a year.† There is sometimes great disappointment when a very eminent counsel is raised to the bench; but all who mention Hussey's name concur in

A. D. 1482.

He is made Chief Justice of the King's Bench.

* His patent, which is extant, contained the words still introduced into the patent of the Attorney-General: "Cum potestate deputandi Clericos ac officiarios sub se in qualibet Curiâ de recordo."—*Pat.* 11 *Edw. IV.* p. 1. m. 28.

† "Will. Husee constit. Capitalis Justic. T. R. apud West. 7 Maii."—*Pat.* 21 *Edw. IV.* "Idem Will. habet CXL marcas annuas sibi concessas pro statu suo decentius manutenendo. T. R. apud Westm. 12 Junii." *Pat.* 21 *Ed. IV.* p. 2. m. 6.

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giving him a high character for judicial excellence. Without any improper compliances, he continued to enjoy court favour, as well as the respect of the public; and it was not apprehended that his tenure of office could be exposed to any peril, the King being a much younger man than himself, with seeming vigorous health. The constitution of Edward, however, had been undermined by licentious indulgences, and he was suddenly carried off while yet only in the forty-first year of his age.

April 9. 1483.

Hussey was supposed to be in great jeopardy, as Richard Duke of Gloucester, made Protector, was expected to fill the high offices of the law with instruments adapted to the unprincipled purposes which he was suspected to entertain; but this extraordinary man, ruthless in the commission of deeds of blood, had the sagacity to perceive that he would facilitate his ascent to supreme power by the reputation of a regard for the pure administration of justice. Therefore, having, in the name of the young King, delivered the Great Seal to the virtuous John Russell, he reappointed Sir William Hussey Chief Justice of the King's Bench.*

April 21. 1483.

In Easter and Trinity Terms following, we learn from the YEAR BOOKS that Hussey presided in that court, as the representative of the infant Sovereign.

On the 26th of June following, the Protector changed his own title to that of King; and that very same day, when he had proceeded from Baynard's Castle to Westminster, and had been proclaimed, having experienced the popularity arising from the appointment of able and upright judges, he caused a writ to pass the Great Seal whereby "Richard III. by the grace of God King of England and France, Lord of Ireland, &c., assigned his right trusty and well-beloved Sir William Hussey, Knight, his Chief Justice, to hold pleas in his Court before him."†

His submission to Richard III.

The Chief Justice may be blamed for acquiescing in this usurpation; but we must remember that he had no concern in bringing it about, — that plausible reasons had been brought forward to make out the illegitimacy of the sons of

* Pat. 1 Ed. V. m. 2.
† 26th June, Pat. 1 Ric. III. p. 1. m. 12.

Edward IV., — that no danger was as yet apprehended for their lives, — and that Richard's claim had been sanctioned by the City of London and by the will of the nation.

As the new King chose to get rid of Hastings, Rivers, Buckingham, and the other grandees who were obnoxious to him, by summary violence rather than judicial murder, the Chief Justice was not exposed to any difficulty in acting under his authority; and he continued till after the Battle of Bosworth, amidst insurrections and civil war, calmly to adjust the private rights of the suitors who came before him. Instead of putting on a coat of mail taken from the King's armoury, like Sir John Fortescue, he declared that it became him to be seen by the public only in the scarlet robe, lined with white minever, he had received from the King's wardrobe.

Henry VII., who had a deep dislike to all whom he knew or suspected to be Yorkists, was much inclined to cashier Chief Justice Hussey as he had done Lord Chancellor John Russell; but, after a month's consideration, came to the conclusion that his loyalty might be safely trusted to any King *de facto*, and accordingly reappointed him in the usual form.* The Lancastrian Sovereign had no reason to repent the confidence he reposed in the Yorkist Chief Justice, whose scruples were, no doubt, soothed by the approaching royal marriage and the promised union of the Roses.

A.D. 1485.

He is continued in his office by Henry VII.

When Parliament met, the Chief Justice was of essential service in removing difficulties which presented themselves in the way of legislation. In the first place, Henry himself had been attainted by an act passed in the preceding reign, and, instead of mounting a throne, and explaining the reasons for summoning the two Houses,—according to the letter of the law, he was liable to lose his life on the scaffold. Nor could this act of attainder be reversed in the usual form, as the King while under attainder (it was suggested) could not lawfully exercise any function of royalty. The question being put to the Judges, Hussey assembled them in the Exchequer Chamber, and induced them all to agree in this ingenious

November.

* Henry dated his reign from 22d of August, 1485, and Hussey's new writ was tested 20th September following. "Will. Husee, miles, constitutus Capitalis Justic. T. R. apud Westm. 1 Hen. VII. p. 1. m. 22."

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A.D. 1485 —1495

solution of the problem that "the descent of the crown of itself takes away all defects and disabilities arising from attainder, and therefore that the act of attainder must be considered as already virtually reversed."

Next, it was ascertained that more than half the Peers who were summoned, and a great many representatives returned to the House of Commons, had been attainted in the same manner; and the question was, whether their attainder could be treated as a nullity, on the ground that Richard III., who gave the royal assent to it, was a usurper? Hussey being consulted, prudently answered, "that it would be of dangerous example to suffer those who ought to observe a law to question the title of the Sovereign under whom the law had been enacted, and that the attainted peers and commoners ought not to take their seats in either house till their attainder had been reversed by a new act of parliament assented to by the King who now is." All the Judges concurred in this opinion, of which Henry made dextrous use by obtaining the famous statute, indemnifying all who act in obedience to the commands of a King *de facto*.*

His death.

Hussey continued Chief Justice of the King's Bench under Henry VII. for a period of ten years, when he expired full of days and of honours. He assisted in remodelling the Court of Star Chamber, and occasionally sat there as a Judge, but none of its sentences were chargeable with excessive severity in his time. He left no issue behind him; and having given away much in charity while he lived, he disposed of the residue of his fortune for pious uses, which in the following age were reckoned superstitious.

Sir John Fineux.

The next Chief Justice of the King's Bench was SIR JOHN FINEUX, of whom, although he presided in that court twenty-eight years, I find little of good or of evil. The office of Chancellor, held successively by Morton, Wareham, Wolsey, and More, now gained such an ascendency, that the Common Law Judges occupied but a small space in the public eye, and their names are seldom connected with events of his-

* Roll Parl. 1 Henry VII.; 1 Parl. Hist. 450.; Lord Bacon's Hist. Henry VII.

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torical interest. But even Fineux has had biographers, and they divide his career into three portions of twenty-eight years each. He was quite idle for twenty-eight years, during which he spent a fair estate at Swenkfield in Kent, inherited by him from his ancestors; he then took to the study of the law, in which he made great proficiency, and at the end of twenty-eight years he was made a Judge. But I find nothing more memorable recorded of him than that he had a house in Canterbury, in each window of which was to be seen his motto, "*Misericordias Domini cantabo in æternum.*"

Tripartite division of his life.

Rivalling his immediate predecessor in posthumous piety, he left for the good of his soul all his property to St. Augustine's Priory, in Canterbury,—a monk of which wrote a treatise in his praise, describing him as "Vir prudentissimus, genere insignis, justitiâ præclarus, pietate refertus, humanitate splendidus, et charitate fœcundus." *

He died in Michaelmas Term, in the seventeenth year of the reign of Henry VIII. A.D. 1526

* See Fuller's Worthies: Kent.

CHAPTER V.

CHIEF JUSTICES TILL THE APPOINTMENT OF CHIEF JUSTICE POPHAM BY QUEEN ELIZABETH.

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Sir John Fitzjames.

WE know more of the next Chief Justice, SIR JOHN FITZJAMES, but very little to his credit. Of obscure birth, and not brilliant talents, he made his fortune by his great good humour, and by being at college with Cardinal Wolsey. It is said that Fitzjames, who was a Somersetshire man, kept up an intimacy with Wolsey when the latter had become a village parson in that county; and that he was actually in the brawl at the fair, when his reverence, having got drunk, was set in the stocks by Sir Amyas Paulet.*

While Wolsey tried his luck in the Church with little hope of promotion, Fitzjames was keeping his terms in the Inns of Court; but he chiefly distinguished himself on gaudy days, by dancing before the Judges, playing the part of "Abbot of Misrule," and swearing strange oaths, — especially by *St. Gillian*, his tutelary saint. His agreeable manners made him popular with the "Readers" and "Benchers;" and through their favour, although very deficient in "moots" and "bolts," he was called to the outer bar. Clients, however, he had none, and he was in deep despair, when his former chum — having insinuated himself into the good graces of the stern and wary old man, Henry VII., and those of the gay and licentious youth, Henry VIII. — was rapidly advancing to greatness.

His early intimacy with Cardinal Wolsey.

Wolsey, while Almoner, and holding subordinate offices about the Court, took notice of Fitzjames, advised him to stick to the profession, and was able to throw some business in his way in the Court of Wards and Liveries, —

> "Lofty and sour to them that lov'd him not;
> But to those men that sought him, sweet as summer."

Fitzjames was devotedly of this second class; and was even

* Lives of Chancellors, i. 444.

suspected to assist his patron in pursuits which drew upon him Queen Catherine's censure: —

> "Of his own body he was ill, and gave
> The clergy ill example."

He is made Attorney General. A.D. 1519.

For these or other services the Cardinal, not long after he wrested the Great Seal from Archbishop Wareham, and had all legal patronage conferred upon him, boldly made Fitzjames Attorney General, notwithstanding loud complaints from competitors of his inexperience and incapacity.

May 13. 1522.

The only state trial which he had to conduct was that of the unfortunate Stafford, Duke of Buckingham, who, having quarrelled with Wolsey, and called him a "butcher's cur," was prosecuted for high treason before the Lord High Chancellor and Court of Peers on very frivolous grounds. Fitzjames had little difficulty in procuring a conviction; and although the manner in which he pressed the case seems shocking to us, he probably was not considered to have exceeded the line of his duty: and Shakspeare makes Buckingham, returning from Westminster Hall to the Tower, exclaim, —

He conducts the prosecution against the Duke of Buckingham.

> "I had my trial,
> And, must needs say, a noble one; which makes me
> A little happier than my wretched father."*

Feb. 6. 1523. He is made a Puisne Judge.

The result was, at all events, highly satisfactory to Wolsey, who, in the beginning of the following year, created Fitzjames a Puisne Judge of the Court of King's Bench, with a promise of being raised to be Chief Justice as soon as there should be a vacancy.† Sir John Fineux, turned of eighty, was expected to drop every term, but held on four years longer. As soon as he expired, Fitzjames was appointed his successor.‡ Wolsey still zealously supported him, although thereby incurring considerable obloquy. It was generally thought that the new Chief was not only wanting in gravity of moral character, but that he had not sufficient professional knowledge for such a situation. His highest quality was discretion, which generally enabled him to conceal his ignorance, and to disarm opposition. Fortunately for him,

Jan. 23. 1527. Chief Justice of the King's Bench.

* Henry VIII. act ii. sc. 1.; 1 St. Tr. 287—298.
† Pat. 13 Henry VIII. p. 2. ‡ Pat. 17 Henry VIII. Rot. 1.

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the question which then agitated the country, respecting the validity of the King's marriage with Katherine of Aragon, was considered to depend entirely on the canon law, and he was not called upon to give any opinion upon it. He thus quietly discharged the duties of his office till Wolsey's fall.

Oct. 1529.

His base conduct on the fall of Wolsey.

But he then experienced much perplexity. Was he to desert his patron, or to sacrifice his place? He had an exaggerated notion of the King's vengeful feelings. The Cardinal having been not only deprived of the Great Seal, but banished to Esher, and robbed of almost the whole of his property under process of *præmunire*, while an impeachment for treason was still threatened against him,—the Chief Justice concluded that his utter destruction was resolved upon, and that no one could show him any sympathy without sharing his fate. Therefore, instead of going privately to visit him, as some old friends did, he joined in the cry against him, and assisted his enemies to the utmost. Wolsey readily surrendered all his private property, but wished, for the benefit of his successors, to save the palace at Whitehall, which belonged to the see of York, being the gift of a former archbishop. A reference was then made to the Judges, "whether it was not forfeited to the Crown?" when the Chief Justice suggested the fraudulent expedient of a fictitious recovery in the Court of Common Pleas, whereby it should be adjudged to the King under a superior title. He had not the courage to show himself in the presence of the man to whom he owed every thing; and Shelley, a Puisne Judge, was deputed to make the proposal to him in the King's name. "Master Shelley," said the Cardinal, "ye shall make report to his Highness that I am his obedient subject, and faithful chaplain and bondsman, whose royal commandment and request I will in no wise disobey, but most gladly fulfil and accomplish his princely will and pleasure in all things, and in especial in this matter, inasmuch as the fathers of the law all say that I may lawfully do it. Therefore I charge your conscience, and discharge mine. Howbeit, I pray you show his Majesty from me that I most humbly desire his Highness to call to his most gracious remembrance that there is both Heaven and Hell."

This answer was, no doubt, reported by Shelley to his brethren assembled in the Exchequer Chamber, although, probably, not to the King; but it excited no remorse in the breast of Chief Justice Fitzjames, who perfected the machinery by which the town residence of the Archbishops of York henceforth was annexed to the Crown, and declared his readiness to concur in any proceedings by which the proud ecclesiastic, who had ventured to sneer at the reverend sages of the law, might be brought to condign punishment.

Nov. 8. Fitzjames assists in drawing up the articles of accusation against Wolsey.

Accordingly, when parliament met, and a select committee of the House of Lords was appointed to draw up articles of impeachment against Wolsey, Chief Justice Fitzjames, although only summoned, like the other judges, as an assessor, was actually made a member of the committee, joined in their deliberations, and signed their report.* Some of the Articles drawn by him indicate a pre-existing envy and jealousy, which he had concealed by flattery and subserviency:—

"XVI. Also the said Lord Cardinal hath hindered and undone many of your poor subjects for want of dispatching of matters, for he would no man should meddle but himself; insomuch that it hath been affirmed, by many wise men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himself; and many times he deferred the ending of matters because that suitors should attend and wait upon him, whereof he had no small pleasure." — "XX. Also the said Lord Cardinal hath examined divers and many matters in the Chancery after judgment thereof given at the common law, in subversion of your laws." — "XXVI. Also when matters have been near at judgment by process at your common law, the same Lord Cardinal hath not only given and sent injunctions to the parties, but also sent for your Judges, and expressly by threats commanding them to defer the judgment, to the evident subversion of your laws if the Judges

* It appears very irregular to us, that Sir Thomas More, the Chancellor, should have sat upon the committee, and acted as chairman, for, although Speaker by virtue of his office, he was not a member of the House, and was only entitled to put the question; yet he signed the report before the Duke of Norfolk, the first peer of the realm, or the Duke of Suffolk, the King's brother-in-law. In early times the committee on a bill was not considered necessarily a proceeding of the House, and sometimes a bill was "committed to the Attorney and Solicitor General."

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A.D. 1529.

would so have ceased." — "XXXVII. Also he hath divers times given injunction to your servants, that have been before him in the Star Chamber, that they, nor other for them, should make labour, by any manner of way, directly or indirectly, to your Grace, to obtain your gracious favour and pardon; which was a presumptuous intent for any subject."

The authority of the Chief Justice gave such weight to the Articles that they were agreed to by the Lords *nemine contradicente;* but his ingratitude and tergiversation caused much scandal out of doors, and he had the mortification to find that he might have acted an honourable and friendly part without any risk to himself, as the King, retaining a hankering kindness for his old favourite, not only praised the fidelity of Cavendish and the Cardinal's other dependants who stuck by him in adversity, but took Cromwell into favour, and advanced him to the highest dignities, pleased with his gallant defence of his old master: thus the articles of impeachment (on which, probably, Fitzjames had founded hopes of the Great Seal for himself) were ignominiously rejected in the House of Commons.*

The recreant Chief Justice must have been much alarmed by the report that Wolsey, whom he had abandoned, if not betrayed, was likely to be restored to power, and he must have been considerably relieved by the certain intelligence of the sad scene at Leicester Abbey in the following autumn, which secured him for ever against the fear of being upbraided or punished in this world according to his deserts.

A.D. 1530.

However, he had now lost all dignity of character, and henceforth he was used as a vile instrument to apply the criminal law for the pleasure of the tyrant on the throne, whose relish for blood soon began to display itself, and became more eager the more it was gratified.

Fitzjames condemns to death Protestants and Roman Catholics.

Henry retaining all the doctrines of the Roman Catholic religion which we Protestants consider most objectionable, but making himself Pope in England in place of the Bishop of Rome, laws were enacted subjecting to the penalties of treason all who denied his *supremacy;* and many of these offenders were tried and condemned by Lord Chief Justice

* 1 Parl. Hist. 492.

Fitzjames, although he was suspected of being in his heart adverse to all innovation in religion. CHAP. V.

I must confine myself to the two most illustrious victims sacrificed by him — Fisher, Bishop of Rochester, and Sir Thomas More. Henry, not contented with having them attainted of *misprision of treason*, for which they were suffering the sentence of forfeiture of all their property and imprisonment during life, was determined to bring them both to the block; and for this purpose issued a special commission to try them on the capital charge of having denied his supremacy. The Lord Chancellor was first commissioner; but it was intended that the responsibility and the odium should chiefly rest on the Lord Chief Justice Fitzjames, who was joined in the commission along with several other common law judges of inferior rank. A.D. 1534. Trial of Bishop Fisher.

The case against the Bishop of Rochester rested on the evidence of Rich, the Solicitor General, who swore he had heard the prisoner say, "I believe in my conscience, and by my learning I assuredly know, that the King neither is, nor by right can be, supreme head of the Church of England;" but admitted that this was in a confidential conversation, which he had introduced by declaring that "he came from the King to ask what the Bishop's opinion was upon this question, and by assuring him that it never should be mentioned to any one except the King, and that the King had promised he never should be drawn into question for it afterwards." The prisoner contending that he was not guilty of the capital crime charged for words so spoken, the matter was referred to the Judges: — June 17.

"Lord Chief Justice Fitzjames, in their names, declared 'that this message or promise from the King to the prisoner neither did nor could, by rigour of law, discharge him; but in so declaring of his mind and conscience against the *supremacy* — yea, though it were at the King's own request or commandment — he committed treason by the statute, and nothing can discharge him from death but the King's pardon.'

Bishop of Rochester.—"Yet I pray you, my Lords, consider that by all equity, justice, worldly honesty, and courteous dealing, I cannot, as the case standeth, be directly charged therewith as

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A.D. 1534.

with treason, though I had spoken the words indeed, the same not being spoken maliciously, but in the way of advice or counsel when it was required of me by the King himself; and that favour the very words of the statute do give me, being made only against such as shall '*maliciously* gainsay the King's supremacy,' and none other; wherefore, although by rigour of law you may take occasion thus to condemn me, yet I hope you cannot find law, except you add rigour to that law, to cast me down, which herein I have not deserved."

Fitzjames, C. J. — "All my brethren are agreed that '*maliciously*' is a term of art and an inference of law, not a qualification of fact. In truth, it is a superfluous and void word; for if a man speak against the King's supremacy by any manner of means, that speaking is to be understood and taken in law as *malicious*."

Bishop of Rochester.—"If the law be so, then it is a hard exposition, and (as I take it) contrary to the meaning of them that made the law, as well as of ordinary persons who read it. But then, my Lords, what says your wisdom to this question, 'Whether a single testimony may be admitted to prove me guilty of treason, and may it not be answered by my negative?' Often have I heard it said, that to overcome the presumption from the oath of allegiance to the King's Majesty, and to guard against the dire consequences of the penalties for treason falling on the head of an innocent man, none shall be convicted thereof save on the evidence of two witnesses at the least."

Fitzjames, C. J.—"This being the King's case, it rests much in the conscience and discretion of the jury; and as they upon the evidence shall find it, you are either to be acquitted or else to be condemned."

The report says that "the Bishop answered with many more words, both wisely and profoundly uttered, and that with a mervailous, couragious, and rare constancy, insomuch as many of his hearers — yea, some of the Judges — lamented so grievously, that their inward sorrow was expressed by the outward teares in their eyes, to perceive such a famous and reverend man in danger to be condemned to a cruell death upon so weake evidence, given by such an accuser, contrary to all faith, and the promise of the King himself."

A packed jury, being left to their conscience and discretion, found a verdict of GUILTY; and Henry was able to make good his saying, when he was told that the Pope intended to

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send Bishop Fisher a cardinal's hat, — "'Fore God, then, he shall wear it on his shoulders, for I will have his head off." *

July 1. 1534 Trial of Sir Thomas More.

The conduct of the Chief Justice at the trial of Sir Thomas More was not less atrocious. After the case for the Crown had been closed, the prisoner, in an able address to the jury, clearly proved that there was no evidence whatever to support the charge, and that he was entitled to an acquittal; when Rich, the Solicitor General, was permitted to present himself in the witness box, and to swear falsely, that "having observed, in a private conversation with the prisoner in the Tower, 'No parliament could make a law that God should not be God,' Sir Thomas replied, 'No more can the Parliament make the King supreme head of the Church."

A verdict of GUILTY was pronounced against the prisoner, notwithstanding his solemn denial of ever having spoken these words. He then moved, in arrest of judgment, that the indictment was insufficient, as it did not properly follow the words of the statute which made it high treason to deny the King's supremacy, even supposing that Parliament had power to pass such a statute. The Lord Chancellor, whose duty it was, as head of the commission, to pass the sentence,—"not willing," says the report, "to take the whole load of his condemnation on himself, asked in open court the advice of Sir John Fitzjames, the Lord Chief Justice of England, whether the indictment was valid or no?"

Fitzjames, C. J. — "My Lords all, by St. Gillian (for that was always his oath), I must needs confess that if the act of parliament be not unlawful, then the indictment is not, in my conscience, invalid."

Lord Chancellor. — "*Quid adhuc desideramus testimonium? Reus est mortis.* Sir Thomas More, you being, by the opinion of that reverend Judge, the Chief Justice of England, and of all his brethren, duly convicted of high treason, this Court doth adjudge that you be carried back to the Tower of London, and that you be thence drawn on a hurdle to Tyburn, where you are to be hanged till you are half dead, and then being cut down alive and emboweled, and your bowels burnt before your face, you are to be beheaded and quartered, your four quarters being set up

* 1 St. Tr. 395—408.

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over the four gates of the City, and your head upon London Bridge."*

No one can deny that Lord Chief Justice Fitzjames was an accessory to this atrocious murder.

May, 1536. Trial of Anne Boleyn and her supposed gallants.

The next occasion of his attracting the notice of the public was when he presided at the trials of Smeaton and the other supposed gallants of Anne Boleyn. Luckily for him, no particulars of these trials have come down to us, and we remain ignorant of the arts by which a conviction was obtained, and even a *confession*, — although there is every reason to believe that the parties were innocent. According to the rules of evidence which then prevailed, the convictions and confessions of the gallants were to be given in evidence to establish the guilt of the unhappy Queen, for whose death Henry was now as impatient as he had once been to make her his wife.

When the Lord High Steward and the Peers assembled for her trial, Fitzjames and the other Judges attended, merely as assessors, to advise on any point of law which might arise.

I do not find that they were consulted till the verdict of GUILTY had been recorded, and sentence was to be pronounced. *Burning* was the death which the law appointed for a woman attainted of treason; yet, as Anne had been Queen of England, some Peers suggested that it might be left to the King to determine whether she should die such a cruel and ignominious death, or be *beheaded*, a punishment supposed to be attended with less pain and less disgrace. But then a difficulty arose, whether, although the King might remit all the atrocities of the sentence on a man for treason, except beheading, which is part of it, he could order a person to be beheaded who was sentenced to be burnt. A solution was proposed, that she should be sentenced by the Lord High Steward to be "burnt or beheaded at the King's pleasure;" and the opinion of the Judges was asked, "whether such a sentence could be lawfully pronounced?"

Fitzjames, C. J. — "My Lords, neither myself nor any of my learned brothers have ever known or found in the records, or read

* 1 St. Tr. 385—396.

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A.D. 1536.

in the books, or known or heard of, a sentence of death in the alternative or disjunctive, and incline to think that it would be bad for uncertainty. The law delights in certainty. Where a choice is given, by what means is the choice to be exercised? And if the sheriff receives no special directions, what is he to do? Is sentence to be stayed till special directions are given by the King? and if no special directions are given, is the prisoner, being attainted, to escape all punishment? Prudent antiquity advises you *stare super antiquas vias;* and that which is without precedent is without safety."

After due deliberation, it was held that an absolute sentence of beheading would be lawful, and it was pronounced accordingly; the Court being greatly comforted by recollecting that no writ of error lay, and that their judgment could not be reversed.*

Death of Fitzjames.

Fitzjames died in the year 1539, before this judgment served as a precedent for that upon the unfortunate Queen Catherine Howard; and he was much missed when the bloody statute of the Six Articles brought so many, both of the old and of the reformed faith, on capital charges before the Court of King's Bench.

He left no descendants; but Sir John Fitzjames, descended from his brother, was a friend and patron of Fuller, the author of the WORTHIES, who, therefore, writes this panegyric on the Chief Justice: — "There needs no more be said of his merit, save that King Henry VIII. preferred him, who never used dunce or drone in church or state, but men of activity and ability. He sat above thirteen years in his place, demeaning himself so that he lived and died in the King's favour."

Fitzjames, although not considered by nature cruel or violent, had incurred much obloquy by his ingratitude to Cardinal Wolsey, and by his sneaking subservency; insomuch that he had not the influence over juries which was desirable for obtaining at all times an easy conviction; and Lord Chancellor Audley suggested the expediency of having for his successor a man of fair and popular reputation, who at the same time would be likely to make himself agreeable

* St. Tr. 410—434.; Hall's Henry VIII. fol. 227 b.; Fox, Mart. ii. 987.; Stow, 572.; Speed, 1014.

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to the King. After the office of Chief Justice of the King's Bench had been kept vacant some months, it was filled by SIR EDWARD MONTAGU, another legal founder of a ducal house still flourishing.

Sir Edward Montagu.

Although he owed his rise entirely to his own exertions, he was of an ancient race. His ancestor, having come over with the Conqueror, built a castle on the top of a sharp hill in Somertshire, and was thence called "Roger de *Monte acuto.*" The family long took the surname of Montacute; and the elder branch, till it became extinct in the beginning of the reign of Henry VI., for several generations bore the title of Earl of Salisbury. The Chief Justice was the younger brother of a younger brother; a junior branch of the family, settled at Hemington in Northamptonshire, who had gradually changed their name to Montagu. He was born at Brigstock in that county, in the latter end of the reign of Henry VII. Being early destined to the profession of the law, which had become the highway to wealth and honours, he was sent when very young to study at an Inn of Chancery, and in due time was entered a member of the Society of the Middle Temple. Here he is said to have made himself, by indefatigable industry, complete master of all the learning of the common law, not neglecting more liberal pursuits, which the example of Sir Thomas More had made fashionable among professional men. I do not find any statement of his call to the bar, or his progress in business; but so highly was he esteemed for learning by the Benchers, that he was appointed by them "Autumn Reader" in 1524, and "Double Reader" a few years afterwards.

His family.

His professional progress.

Enterprising lawyers now began to get on by politics; and when a parliament was summoned in 1523, Montagu contrived to be returned as a member of the House of Commons. But this speculation had nearly ended fatally to him. Like Sir Thomas More and Lord Bacon, he indiscreetly made a maiden speech against granting a supply. This was the parliament in which Sir Thomas More was chosen Speaker, and in which Wolsey had gone down to the House of Commons to complain of the tardy progress of the money bill. Montagu, thinking that he had found a favour-

He is returned to the House of Commons: how a leader of Opposition was dealt with by Hen. VIII.

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able opportunity for his *début*, made a violent harangue on the breach of privilege which had been committed. But the next day he was sent for by the King, who thus addressed him: "Ho! will they not let my bill pass?" The young patriot, in a great fright, knelt down; when Henry, laying his hand on his head, added, "Get my bill to pass by twelve of the clock to-morrow, or else by two of the clock to-morrow this head of yours shall be off." In an instant was Montagu cured of his public spirit, and he became a steady courtier for the rest of his days.

A.D. 1531.

When he "put on the coif," or "took upon himself the degree of serjeant-at-law," he gained prodigious applause. A call of serjeants in those times was an event of historical importance, by reason of the festivities attending it, and of its marking an æra in the annals of Westminster Hall. The chroniclers celebrate the call of serjeants which included Sir Edward Montagu as the most splendid on record, and ascribe its success in no small degree to his liberality and taste. The feast was held in Ely House, Holborn, and lasted five days: Friday, the 10th of November, and Saturday, Sunday, Monday, and Tuesday following. On the Monday, which was the greatest day, King Henry and Queen Catherine dined there, with all the foreign Ambassadors, all the Judges, the Lord Mayor and Aldermen of London, all the King's Court, and many of the nobility. "It were tedious," says Dugdale, "to set down the preparation of fish, flesh, and other victuals spent in this feast, and would seem almost incredible, and wanted little of a feast at a coronation." *

Grand feast when Montagu was called Serjeant.

* However, he gives a few items as a specimen, "noting the prices to show how things had risen in a century:"—

"There were brought to the slaughter-house,—	£	s.	d.	
24 great bieves, at	1	6	8	the piece.
100 fat muttons, at	0	2	10	„
51 great veales, at	0	4	8	„
34 porkes, at	0	3	3	„
90 pigs, at	0	0	6	„
Capons of Greece, 10 dozen, at	0	1	8	„
Capons of Kent, 9 dozen and 6, at	0	1	0	„
Cocks of Grose, 7 dozen and 9, at	0	0	8	„
Cocks course, 14 dozen, at 8*d.* and 3*d.* a-piece.				
Pullets, the best	0	0	2	ob.
Pigeons, 37 dozen, at	0	0	10	a dozen.
Swans, 13 dozen.				
Larks, 340 dozen, at	0	0	8	„

Dug. Or. Jur. p. 128.; *Stow's Survey of London*, 426.

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This must have been almost the last occasion of the King being seen in public with his first wife; and he would have been much obliged to the Serjeants if they could, by their *cantrips*, have put Anne Boleyn in her place; but they contrived to satisfy him highly, and he declared, on his departure, that "the entertainment had been much to his good liking." He took great notice of Serjeant Montagu, whose manners were particularly agreeable, and invited him to the palace at Westminster. From that time, there was a personal intimacy between them, and Montagu was set down as a royal favourite marked for promotion.

He is made Chief Justice of the King's Bench. Jan. 21. 1539-40.

However, year after year passed away, without any change in his position, and he thought himself doomed to perpetual neglect, when, without having been ever Attorney or Solicitor General, or King's Sergeant, or Puisne Judge, he found himself one day Chief Justice of England.

Pleasures and discomforts experienced by him.

For a short time he, no doubt, was pleased in observing the joy of his wife and children; in receiving the congratulations of his friends; in listening to a panegyric on his learning and his virtues from Lord Chancellor Audley; in appointing his officers; in giving good places to his dependants; in putting on his scarlet robes, and throwing the collar of S.S. round his neck; in witnessing the worshipful homage paid to him when he took his seat on the bench; in attending divine service at St. Paul's, and afterwards dining with the Lord Mayor of London; in hearing discourse addressed to him, interlarded with "My Lord" and "Your Lordship;" in limners soliciting leave to draw his portrait; in seeing how the Bar not only nodded submissively to his law, but laughed vociferously at his jests; in encountering the envy and jealousy of his enemies and his rivals; and in finding that his small salary was amply made up to him from the fees, gratuities, and presents which flowed in upon him from all quarters. But it is certain that these pleasures soon faded away, and that he wished himself again a serjeant-at-law, quietly and drowsily practising in the Court of Common Pleas. Unfortunately for his comfort he had a *conscience*, — and he was unable either to obey its dictates or to silence its

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reproaches. A Chief Justice in those days, long to relish his elevation, must have been made of sterner stuff than Sir Edward Montagu.

He professed, and, I believe, sincerely, an inclination for the new doctrines in religion; but, under the statute of the SIX ARTICLES, he was often called upon to convict and to sentence to death both Papists and Protestants. He was still more annoyed by what may be called the *extrajudicial work* required of him. When Anne of Cleves was to be divorced because her person after marriage was found not agreeable, and the King declared that in going through the marriage ceremony he had never, in his own mind, given his consent to the marriage, the Chief Justice was obliged to give an opinion that the marriage had not been duly contracted and ought to be declared null. When Cromwell, for negotiating this marriage, and deceiving the King as to the lady's personal charms, was to lose his head, the Chief Justice was obliged to certify to the House of Lords that innocent acts which he had done with the King's authority amounted to treason, and afforded sufficient ground for passing a bill of attainder against him. When Queen Catherine Howard, who certainly had been guilty of incontinence before her marriage, but against whom there was no sufficient evidence of such misconduct afterwards as would subject her to the pains of treason, was to be put to death because she had deceived the King in persuading him that she had come a virgin to his arms, the Chief Justice was obliged to answer in the affirmative a question submitted to him, "Whether, as the accused party was a Queen, the law would infer that she had committed adultery, from facts which in the case of a common person would afford no such inference?" *

Gives an opinion on the invalidity of the King's marriage with Anne of Cleves.

His opinion on the proofs against Catherine Howard. Jan. 1546.

This last affair seems to have weighed heavily on his mind; he thenceforth openly declared that he was tired of his dignity, and he even talked of resigning it and retiring into private life. But he was tempted to remain by large

* He answered, that the facts put to him hypothetically, "considering the persons implicated, formed a satisfactory presumption that adultery had been committed."

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grants of abbey lands. An apologist says, "In his time, though the golden showers of abbey lands rained amongst great men, it was long before he would open his lap (scrupling the acceptance of such gifts), and at last received but little in proportion to others of that age."* This very graphically delineates his character. He would much rather have gained all his objects by honourable means, — but he could not resist temptation, although sin was followed by remorse. In truth, he partook very largely of the spoils of the Church, and, in spite of his unhappiness, he was reluctant to renounce not only the emoluments of office, but the chance of further aggrandisement.

He exchanges his office for the Chief Justiceship of the Common Pleas.

An expedient presented itself, of which he eagerly availed himself. The office of Chief Justice of the Common Pleas became vacant by the sudden death of Sir John Baldwin. This had now acquired the name of the "pillow," from its allowing the possessor to be put to sleep by the somnolent pleadings of the serjeants who exclusively practised there, in conducting real actions, without any excitement from criminal or political trials. For profit it was superior to the Chief Justiceship of the King's Bench; and most of those who had the good luck to lay their heads upon it, when taken from the tumults of the bar, remained fully contented with it for life. Yet, being inferior in point of rank, an etiquette had prevailed that no one could accept it who had been in the higher situation of Chief Justice of England. Montagu probably had some scruples, as usual when he was about to do an improper action; but if he had any, he soon overcame them, for a few days after Baldwin's death he went to the King, and, after making a parade of his services, and his loyalty, and his extreme desire still to be of service to his Highness, he feigned ill-health and infirmity, and prayed that he might be allowed to be Chief Justice of the Common Pleas instead of the King's Bench. Wriothesly, a rigorous Roman Catholic, was then Chancellor, and he bore no good will to Montagu, who advocated the King's supremacy, and was a grantee of Church property. However, he thought that such a character would be less mischievous in the obscurer place which

* Fuller

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he coveted, and by his advice the King consented to the exchange. Accordingly, on the 6th Nov. 1546, Montagu was superseded as Chief Justice of the King's Bench, and took his seat as Chief Justice of the Common Pleas.*

Now he was like a ship that, having been tossed on a stormy ocean, suddenly enters a creek where the winds are stilled and the waters are smooth. He might feel some mortification when he saw Richard Lyster, whom he had lately snubbed at the bar, take precedence of him in judicial processions as Lord Chief Justice of the King's Bench; and when he thought that his decisions were liable to be reversed by the caprice of that court where his word had been law; but he must have exulted in experiencing the quiet and security he had managed to obtain,—in soothing his conscience by resolutions to repent of past transgressions, without being driven to commit new ones,—and in thinking that, when the golden showers of abbey lands again fell, he might still open his lap.

His conduct on the trial of the Duke of Norfolk.

During the remainder of this memorable reign, once, and once only, he was in danger of being subjected to the like perils, pangs, and remorse to which he had been exposed when Chief Justice of the King's Bench. The old Duke of Norfolk, having become obnoxious to the Seymours, who were gaining an ascendency at Court, was under prosecution for treason, the principal charge against him being that, as he was descended from the royal family through a female, he had ever since his father's death quartered on his shield the royal arms of England with a difference. The two Chief Justices were summoned to attend his examination before the Council, and it was expected that they would be asked whether this pretension, which ought to have been decided by the College of Heralds, amounted to a compassing of the King's death under the statute of 25 Edw. III. But, luckily for the consciences of the Chief Justices, the Duke, knowing the hopelessness of a defence, and hoping to soften the King by submission, voluntarily subscribed, in their presence, a formal confession of his guilt, whereby he admitted

* Pat. 37 Henry VIII. p. 18. Fuller remarks, "A descent in honour, but ascent in profit,—it being given to old age rather to be thrifty than ambitious."

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that he had quartered the royal arms in the manner alleged, which, as he knew, by the laws of this realm amounted to high treason. This document was attested by the two Chief Justices (Montagu signing after Lyster*), and all they could be blamed for was that they did not caution him against such an indiscretion.

As soon as the proceeding had been completed in due form, it was made the foundation of an act of attainder, and the Duke would have suffered death as a traitor if there had not been an opportune demise of the Crown early in the morning of the day appointed for his execution.

Jan. 28. 1517.

The commission of Montagu as Chief Justice of the Common Pleas was renewed, and he held the office during the whole of the reign of Edward VI. Although he had been named one of Henry VIII.'s executors, he long contrived to steer clear of the violent factions by which the country was agitated. But, after the tragical end of both the Seymours, Dudley, Duke of Northumberland, having become complete master of the kingdom, and seeing the approaching end of the young King, resolved to prolong his own rule by defeating the succession of the Princess Mary. He thought that the Chief Justice of the Common Pleas would be a useful instrument in carrying into effect the project he had formed. This was to induce the dying Edward to make a will disinheriting his sisters, Mary and Elizabeth, and leaving the crown to his cousin, Lady Jane Grey. Of all the Judges on the bench, Montagu was considered to have the fairest character, with the weakest nerves; and, without any notice of the business to be debated, he and two or three Puisnies, over whom he was supposed to have influence, were summoned to attend a council at Greenwich, where the Court then lay. Being required to prepare a will for the King to the effect before stated, he was thrown into greater perplexity than he had ever experienced when Chief Justice of the King's Bench under Henry VIII.; and, although charged to obey upon his allegiance, he plucked up courage to refuse till he should have an opportunity to look into the acts passed for regulating the succession, and to consult the whole of his

He is employed to make the will of Edward VI. in favour of Lady Jane Grey.

* 1 St. Tr. 458.

brethren. The more he considered the matter, the more he was frightened, for he saw that what he was asked to do was not only contrary to law, but would be sure to expose him to the penalties of treason. Accordingly, at a council held two days after, he explained that by act of parliament the crown was entailed on the Lady Mary after the death of his Highness without issue, and that nothing short of an act of parliament could alter this destination. But, Northumberland threatening the utmost violence against all who should attempt to thwart his inclination, the following plan was resorted to — that a commission should pass the great seal, authorising Montagu to draw the will in the prescribed form; that it should, when drawn and executed by Edward, be signed by all the Judges; and that a pardon at the same time should pass the great seal to indemnify them for any offence against the law which they might thereby have committed. Thus fortified, Montagu drew the will, and under it the Lady Jane Grey was proclaimed Queen of England. July 9.

He waited upon her when she came from Sion House to the Tower of London preparatory to her coronation; but he was one of the first to desert her when he heard of the general expression of loyalty in favour of Queen Mary.

He loses his office on the accession of Queen Mary.

For some time he was in considerable danger of a capital prosecution, the will of Edward being in his handwriting, and a report being spread that he had furnished the arguments in law by which an attempt had been made to support it. He was arrested, confined in the Tower, and subjected to repeated examinations; but Bishop Gardyner, now Chancellor and Prime Minister, was convinced that he had acted under constraint, and, while others expiated on the scaffold the offence in which he had been implicated, after six weeks' imprisonment he was set at liberty, being punished only by the loss of his Chief Justiceship, by a fine of 1000*l.*, and by the surrender of some abbey lands granted to him at the recommendation of the Protector Somerset.

His death.

He then retired to his country house, where he died on the 10th of February, 1556. He was buried with his ancestors in Hemington church, and a splendid marble monument was there erected to his memory, with the following

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semi-barbarous inscription, which, if prepared by himself, shows that he did not concur in the saying that "the receiver of abbey lands can have no faith in prayers for the dead."

"ORATE PRO ANIMA EDWARDI MOUNTAGU MILITIS NUPER CAPITALIS JUSTIC. DE COMMUNI BANCO APUD WESTM.

"Montacute pater, legum jurisque magister,
O Edwarde, vale! quem disciplina severa
Furit et improbitas hominum scelerata timebat.
Moribus antiquis vixisti, pacis amator,
Virtutis rigidus custos, vitiique flagellum.
O venerande senex! te luxuriosa juventus,
Criminis ultorem metuens, in funere gaudet.
Patria sed meret, sancto spoliata latore,
Qui vixit justi summus defensor et æqui.
Hunc tu præteriens lector defende precando."*

Having been thrice married, he left eight sons and nine daughters, for all of whom he was able amply to provide. The title of Duke of Montagu bestowed upon one branch of his descendants, and of Earl of Halifax upon another, have become extinct, but the Duke of Manchester and the Earl of Sandwich are sprung from him in the direct male line.

The five obscure Chief Justices of the King's Bench.

The next five persons successively appointed to the office of Chief Justice of the King's Bench (Sir Richard Lyster, 9th Nov. 1546; Sir Roger Cholmley, 21st March, 1552; Sir Thomas Bromley, 4th Oct. 1553; Sir William Portmore, 11th June, 1554; and Sir Edward Saunders, 8th May, 1556) were neither eminent in their profession nor connected with the stirring events of the times in which they lived. I shall therefore pass them over without further notice, and introduce to the reader a contemporary Chief Justice of the Common Pleas, to whom we lawyers still look up with much reverence — SIR JAMES DYER.

Sir James Dyer, Lord Chief Justice of the Common Pleas.

I myself am bound particularly to honour him as the first English lawyer who wrote for publication "Reports of Cases" determined in our municipal courts, — being followed by a long list of imitators, containing my humble name. To show the respect in which our craft was once held, and to excuse myself to the reader for introducing a Law Reporter, I begin with some Latin lines, composed by his editor soon after his death, when a huge folio, the labour of thirty years, was given to the world: —

* 2 Bridge's Northampton, 347.

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"CANDIDO LECTORI CARMEN.

Ecce per assiduos tandem collecta labores,
Expectata diu, jam monumenta patent.
Et quæ ter denos vix sunt congesta per annos,
En uno inclusit pro brevitate libro.
In cujus laudem, satis est scripsisse Dierum,
Patronoque alio non opus esse reor.
Cujus nota satis doctrina, potentia, virtus,
Cujus juncta gravi cum pietate fides.
Cujus summus honor, cujus veneranda potestas,
Semper erunt domini signa notæque sui.
Ergo vade Liber, primoque in fronte, Dierum
Inscriptum gestas, hoc duce tutus eris.
Improba ne dubites vani convicia vulgi,
Sat tibi sit tanti gesta fuisse viri.
Quem nec consumet spatium nec longa vetustas,
Tempora quem rapient nulla, nec ulla dies:
Docte Dierr vale, tua fama perennis Olympo
Vivet ad extremos te moriente dies."

* Latin verses in his praise.

I may not flatter myself that I can assist in fulfilling these prophesies, and in making his name immortal; but I can easily show that he deserves a place among the Worthies of Westminster Hall.

His origin and education.

He was descended from an ancient family of Somersetshire, which likewise produced Sir Edward Dyer, Chancellor of the Garter under Queen Elizabeth, — an eminent poet, as well as an accomplished courtier, and a very formidable competitor with the Earl of Leicester and Sir Christopher Hatton for the favours of their royal mistress. — James Dyer was born about the year 1512, and was the second son of Richard Dyer, who had a good estate at Wincanton, in that county. Whetstones, the rhyming biographer, who celebrated the great ornaments of the reign of Elizabeth, gives us this account of his education: —

"In tender yeares he was to learning set;
And vessels long their seasoned liquors taste:
As time grew on, he did to Oxford get,
And so from thence he was in *Strand Inne** plaste;
But him with fame the Middle Temple graste:
The depth of lawe he searcht with painefull toyle,
Not cunning quirks the simple man to spoyle."†

His early genius for reporting.

As a proof of the early genius he displayed for reporting, we are told by prose authorities that he was remarkable for a diligent attendance in the courts of law every morn-

* Then an Inn of Chancery where legal studies began.

† "The Life and Death of the good Lord Dyer," reprinted in 1816 at the Auchinlack press.

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ing from seven to eleven, with his note-book, in which he took down, in short-hand, the arguments and judgments in all important cases occurring in Westminster Hall. When he returned to his chamber after supper, at six o'clock, he digested and abridged his notes into a lucid report of each case, introducing only the facts necessary for raising the point of law determined, with a brief statement of the manner in which it was presented by the counsel to the court, and the opinion of each of the judges; — improving infinitely upon the YEAR BOOKS, which generally presented a confused mass of dialogue between the counsel and the judges, — the reader often being left in doubt whether the speaker stood at the bar or sat on the bench. Hence the admirable reports of Lord Chief Justice Dyer, which were afterwards given to the world, and hence the valuable labours of succeeding reporters on the same model.

His merits as a reporter.

A.D. 1537.

After having been a student of law rather more than seven years, he was called to the bar. His progress there was not very rapid, for both his parts and acquirements are said to have been more solid than brilliant. He avoided all evil arts to promote the success either of others or of himself.

> "He with much care his clyents' wrongs redrest;
> By vertue thus he clymede above the rest,
> And feared no fall, sith merit was his guide,
> When reaching heads ofte slip in cheifest pride."*

Mar. 1553.

He is Speaker of the House of Commons.

He steadily advanced in business and in reputation, insomuch that in the last parliament of Edward VI. he was returned as a member of the House of Commons; and he was elected Speaker, although without the rank of Solicitor General, or of Serjeant, usually considered necessary for that dignity. We have no particulars of his performance when, being presented at the bar of the House of Lords, he prayed that the privileges of the Commons might be allowed, — for the Journals merely say that he made "an ornate oration before the King." On account of Edward's declining health, the parliament sat only one month†, — at the end of which, Dyer ceased for ever to be a parliament man; and, having received 100*l.* for his fee as Speaker, he was probably not

* Whetstones.

† 1 Parl. Hist. 599—602.

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sorry to be freed from the distraction of politics, that he might devote himself exclusively to his favourite pursuit.

A.D. 1553.

Immediately after, he took the degree of Serjeant at Law; and, as he had warmly espoused the Protestant side, it was expected that he would soon receive high promotion; but his hopes seemed extinguished by the premature death of the Protestant King, and the accession of the bigoted Mary.

He had no concern in the plot for putting the Lady Jane Grey on the throne, and, as a sound lawyer, he had denied the power of Edward to change the succession to the crown by his will, contrary to an act of parliament as well as to the common law of the realm.

Oct. 19. He is made Queen's Serjeant.

It was probably for that reason that, although he did not, like many others, now change his religion, he was honoured with the appointment of Queen's Serjeant. I presume that, without any formal reconciliation to the Church of Rome, he must, after the example of Sir Nicholas Bacon, Sir William Cecil, and the Princess Elizabeth herself, — good Protestants in their hearts, — have conformed, during this reign, to the dominant worship; for Lord Chancellor Gardyner could not have recommended to the royal favour a notorious schismatic.

April, 1554. He conducts the prosecution against Sir Nicholas Throckmorton.

Dyer certainly enjoyed the confidence of Mary's Government; and he was employed as one of the counsel to prosecute Sir Nicholas Throckmorton, charged with high treason, as an accomplice in Sir Thomas Wyat's rebellion.* On this occasion, he met with a signal defeat; the prisoner, who was a man of great ingenuity and eloquence, having the almost unprecedented good luck, in those ages, to obtain a verdict of acquittal. We have a very minute report of the proceedings, showing that as yet there were no rules whatever as to pro-

* It has been supposed that he acted as one of the judges on this occasion, because his name is mentioned in the commission (see Life of Dyer, prefixed to the last edition of his Reports); but it is mentioned with that of the Attorney General, and it always has been, and still is, the custom, in commissions of oyer and terminer, to name the King's counsel as commissioners; this nomination not preventing them from practising as advocates before their brother commissioners. I have often thought of the difficulty which would arise if they were to be guilty of a contempt of court, and deserve to be committed, — since, for anything I know, they might at any moment sent themselves on the bench and act as judges.

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cedure or evidence on criminal trials. Much of the time was occupied with questioning the prisoner, and, instead of any formal speeches being delivered, a conversation was kept up between the judges, the jury, the counsel, and the prisoner, in the midst of the reading of written confessions and depositions. When the jury had been sworn, thus spoke Sir Nicholas: —

"And it may please you, Master Serjeant, and the others my masters of the Queen's learned counsel, albeit you are appointed to give evidence against me, yet I pray you remember I am not alienate from you, but that I am your Christian brother. You ought to consider that you are not so privileged but you have a duty of God; which, if you exceed, will be grievously required at your hands. It is lawful for you to use your gifts which I know God hath largely given you, as your learning, art, and eloquence, so as thereby you do not seduce the minds of the simple and unlearned jury. For, Master Serjeant, I know how by persuasions, enforcements, prescriptions, applying, implying, inferring, conjecturing, deducing of arguments, wresting and exceeding the law, the circumstances, the depositions, and confessions, unlearned men may be enchanted to think and judge things indifferent, or at the worst but oversights, to be great treasons. Almighty God, by the mouth of his prophet, doth conclude such advocates to be cursed, saying, 'Cursed be he that doth his office craftily, corruptly, and maliciously.' And consider, also, that my blood shall be required at your hands, and punished in you and yours to the third and fourth generation. You and the Justices, when called in question, excuse such erroneous doings by the verdict of twelve men; but I assure you such purgation serveth you as it did Pilate, and you will wash your hands of my bloodshed as Pilate did of Christ's. And now to your matter."

An attempt was first made to induce the prisoner to confess, without any evidence being given against him, and he is thus interrogated: —

"How say you, Throgmorton, Did not you send Winter to Wyat, and devise that the Tower of London should be taken?' — *A.* 'I confess I did say to Winter that Wyat was desirous to speak with him.' *Q.* 'Yea, sir, and you devised together of taking the Tower of London, and of other great treasons.' — *A.* 'No, I did not so: prove it.'"

Dyer afterwards said, — "And it may please you, my Lords,

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and you, my masters of the jury, to prove that Throckmorton is a principal doer in this rebellion, many things are to be declared,—amongst others, Crofte's confession. He saith, Sir Nicholas, that he and you, and your accomplices, did many times devise about the whole matters, and he made you privy to all his determinations." *Throckmorton:* "Master Crofte is yet living, and is here this day; how happeneth it he is not brought face to face to justify this matter? Either he said not so, or he will not abide by it." *Dyer:* "For the better confirmation of all the treasons objected against the prisoner, and therein to prove him guilty, you of the jury shall hear the Duke of Suffolk's deposition, who was a principal, and hath suffered accordingly."

"Then," says the report, "the said Serjeant read the Duke's confession touching the prisoner, amounting to this effect, *That the Lord Thomas Grey did inform the said Duke that Sir Nicholas Throckmorton was privy to the whole devices.*"

Throckmorton: "But what doth the principal author of this matter say against me; I mean the Lord Thomas Grey, who is yet living? Why is not his deposition brought against me, for so it ought to be if he can say anything? Neither the Lord Thomas Grey hath said, can say, or will say anything against me, notwithstanding the Duke's confession and accusation, or he should have been here now. The Duke doth refer only to what he says he has heard from the Lord Thomas."

After a long trial, conducted in the same fashion, the jury very properly found a verdict of NOT GUILTY, — for which they were imprisoned and heavily fined.* This acquittal was a great mortification to the Government, although they had the consolation of convicting Sir John Throckmorton, Sir Nicholas's brother, on exactly the same evidence.

May 8. 1556. He is made a Puisne Judge.

Dyer was rewarded for his zeal (which was not considered as having led him at all beyond the line of his professional duty) by being made a Puisne Justice of the Court of Common Pleas; and, in the following year, he was promoted to be a Puisne Justice of the Court of King's Bench.

April 28. 1557.

He turned out to be a consummate Judge, although he had been only an indifferent advocate. He was allowed to be by far the best lawyer of his time; he was above all

* 2 St. Tr. 869—902.

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suspicion of bribery, when judicial corruption was by no means rare; he evinced extraordinary soundness of intellect, as well as acuteness; and, caring nothing about literature, and very little about the religious disputes which agitated the public, he was indefatigably industrious in the discharge of his official duties.

Nov. 18, 1558.

Queen Elizabeth, who was above all things anxious to have the judgment-seat properly filled, the very day after her accession to the throne renewed his commission as a Puisne Justice, bringing him back to the Common Pleas; and shortly afterwards she made him Chief Justice of that court, in the room of Sir Anthony Brown, whom, from being Chief Justice, she degraded to be a Puisne, and who was contented to serve under a Chief allowed by himself, as well as the rest of the world, to be greatly his superior.*

Jan. 22. 1559. Chief Justice of Common Pleas.

"From roome to roome † he stept by true degrees.
And mounts at length to soverigne justice' place,
Where long he sat Chief Judge of Cõmon Pleas,
And to say truth he sat with justice grace
Whose sacred will was written in his face;
Settled to heare but very slowe to speake,
Till either part, at large, his minde did breake.

"And when he spake he was in speeche reposde;
His eyes did search the simple sutor's harte;
To put by bribes his hands were ever closde,
His processe just he tooke the poore man's parte,
He rulde by lawe and listened not to arte,
These foes to truthe—loove, hate, and private gaine,
Which most corrupt, his conscience could not staine." ‡

Fuller says, "Sir James Dyer remained Chief Justice of the Court of Common Pleas twenty years, — longer, if my eye or arithmetic fail me not, than any in that place before or after him."

But as no criminal or political cases were within his jurisdiction, and he mixed so little with any thing beyond its strict limits, his subsequent career is less interesting, although it excited the admiration of his contemporaries.

He still employed himself in digesting notes of the most important cases which came into his court, or which, on ac-

* If this precedent had been followed, it might have been very useful for Westminster Hall; but, however superior a puisne may have been esteemed to the chief, I am not aware of any other instance of their changing places.

† "Roome" in old English was used for *office*.

‡ Whetstones.

count of their difficulty, were adjourned into the Exchequer Chamber before all the Judges.* His "Reports" were not printed till after his death; but he had prepared them for publication, and they afford a stupendous proof of his industry and learning. Although now of little use to tell us what the law is, they are valuable records of the history of English jurisprudence and English manners.

His Reports.

We have a case illustrating the custom of the marriage of children then prevailing. A boy of the age of twelve years contracted marriage with a girl of sixteen, *per verba de præsenti;* the marriage was solemnised in the face of the church, and the married pair were put into bed together. The husband dying a few days after, the widow brought a writ of dower, claiming one third of his lands. The heir pleaded, that they *had never been joined in lawful matrimony.*† — Her counsel cited an authority from the YEAR-BOOK of 12 Richard II., where, in a writ of dower, the wife, at the time of the death of him who was supposed her husband, was only of the age of eleven years; and he who was supposed her husband, of the age of ten years and a half; and judgment was given, that she should recover seisin of one third of her husband's lands. On the other side it was argued, that consent only constitutes matrimony; that here the supposed husband had not reached the age of consent; that, by all the authorities, he might have afterwards dissented and annulled the marriage; and that the supposed consummation was a nullity; — a dictum of a learned judge in the time of Edward I. was relied upon: "A wife shall lose dower, if her lord (*scil.* her husband) die before nine years of age." — Thereupon, a writ was directed to the bishop of the diocese, to certify whether this was a valid marriage; and he returned

14 Eliz. Case on the marriage of minors.

* This course was then very common, and it continued to be occasionally resorted to till the reign of George IV., when it was entirely superseded by the establishment of a new system of courts of error, by which the decisions of each of the superior courts of common law were subjected to the review of a tribunal consisting of the judges of the two others. Another remnant of the Aula Regis was, the reference to all the judges of questions of criminal law, which was superseded in the year 1848, by the bill I had the honour to introduce for establishing a court of appeal from courts of oyer and terminer, and from the quarter sessions.

† In Norman-French, "ne unques accouplés en loyal matrimonie."

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22 Eliz.

a certificate, which Dyer, C. J., and Meade and Mounson, JJ., against the opinion of Wyndham, J., held to be insufficient, and the action was abated. But, eight years after, it was revived, and a writ being directed to the successor of the former bishop, he certified that "the demandant is to be taken for a lawful wife and accoupled in lawful matrimony;" so judgment was given in her favour, that she was entitled to dower, on the ground that "there had been espousals, and that espousals continue always till defeated by dissent; whereas here, there had been no dissent, and at the time of the husband's death the marriage subsisted." *

Case on the benefit of clergy.

In Dyer's time, a man being convicted of a simple felony, — as stealing any chattel of the value of twelve pence, — if, when asked why he should not be sentenced to die, he prayed the benefit of clergy, the book containing the "neck verse" was put into his hand; and if he could read, he was discharged; but if he could not, he was hanged.† A question arose "whether, if a man, who may have his clergy granted in case of felony, prays his book, and, in fact, cannot read, and it is recorded *non legit ut clericus*, and, being respited for a time, he learns to read before he is executed, he shall have his clergy, notwithstanding the record?" The matter was referred to all the Justices of Assize assembled at Serjeants' Inn, and it was resolved *in favorem vitæ* that he should have his clergy; "for," said Dyer, "he should have had it allowed under the gallows by the Year-Book 34 H. 6. 49 a, b, pl. 16., if the judge passed by there, and much more here. And although he has been taught and schooled in the gaol to know letters and read, that shall help him for his life; BUT THE GAOLER SHALL BE PUNISHED FOR IT." ‡

3 & 4 Eliz.

Cases on the law of villeinage.

The most curious cases in Dyer's Reports are upon questions respecting "villeinage" or *slavery*. It is not generally known, that, down to the reign of Queen Elizabeth, there

* Dyer, Rep. 313 a., 368 b.

† The "wisdom of our ancestors" in their criminal law was particularly shown in their treatment of women; for as no woman could lawfully be a *clerk* (Pope Joan's case not being recognised), all women convicted of larceny were hanged, whether they could read or not.

‡ Dyer, 205 a.

were in England both "villeins in gross," or slaves that might have been sold separately like chattels, and "villeins regardant," or slaves attached to particular land, with which they were transferred along with the trees growing upon it. —I will give a few examples:—

In an action of trespass and assault, there was a justification by the lord of a manor that the plaintiff was his *villein regardant,* and the evidence being that he was his *villein in gross,* the question arose, for which side judgment should be given? The defendant insisted that the substantial question was, "villein or free?" not "villein regardant or villein in gross?" and that having greater rights over the plaintiff as "villein in gross" than as "villein regardant," he had proved more than he was bound to prove, and the action was well barred. One judge inclined to this opinion, but the rest of the Court thought that, in favour of liberty, the plea must be strictly proved; and peradventure the plaintiff was misled by the false issue tendered to him, and might have deemed it enough to negative the *regardancy,* without bringing forward proof to negative the *villeinage in gross.* So the plaintiff became a freeman.*

A. B., seised in fee of a manor to which a villein was regardant, made a feoffment of one acre of the manor by these words: "I have given one acre, &c., and further, I have given and granted, &c., John S. my villein." Question, "does the villein pass to the grantee as a villein in gross, or as a villein appendant to that acre?" Two of the judges thought he should pass in gross, as there are several gifts, though in one deed; while the other judges said that if the whole manor had been granted, with a farther grant of "John S. my villein," the villein would clearly have passed as part of the manor, and therefore that the acre and the villein being granted together there was no severance. The Court being equally divided, no judgment seems to have been given.†

The tenant in tail of a manor, to which villeins are regardant, enfeoffs one of the villeins of one acre of the manor,

* Dyer, 48 b, pl. 1. † Ibid. pl. 2.

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and dies. Now he clearly had exceeded his power, although, had he been tenant in fee simple, the effect would have been, that the villein would have been enfranchised. But the question was, whether the son of the feoffer, who was heir in tail, could at once seise the villein? The Court held that, although all the father had done might be disaffirmed, the son was bound, first to recover the acre of land, and then, but not till then, he might seise his villein.*

Butler, lord of the manor of Badminton, in the county of Gloucester, contending that Crouch was his villein regardant, entered into certain lands, which Crouch had purchased in the county of Somerset, and leased them to Fleyer. Crouch thereupon disseised Fleyer, and Fleyer brought an action against Crouch, who pleaded that he had purchased the land. Fleyer replied his lease from Butler, and alleged that "Butler and his ancestors, and all those whose estate he hath in the manor of Badminton, were seised of Crouch and his ancestors, as of villeins regardant to the same manor, from time whereof the memory of man runneth not to the contrary." Issue being thereupon joined, the jury found a special verdict, "That Butler and his ancestors were seised of the manor from time immemorial; and that the ancestors of Butler were seised, during all that time, of the ancestors of Crouch as of villeins regardant, until the first year of Henry VII., and that Crouch was a villein regardant to the said manor, and that no other seizin of Crouch or his ancestors was had since; but whether the said seizin of the said manor be in law a seizin of the said Crouch and his ancestors since the said first year of Henry VII. the jurors prayed the opinion of the Court."

Dyer, C. J., and all the Judges of the Court of Common Pleas, agreed that upon this verdict there should be judgment for the defendant, chiefly on this ground,—"because

* Dyer, 48 b. pl. 4. "So it is holden in our old books, if a villein be made a knight, for the honour of his degree his person is privileged, and the lord cannot seise him until he be disgraded."—*Co. Litt.* 136. If a *niefe*, or female villein, was married by a freeman, the lord could not seise her, but might maintain an action against the husband for the loss of her: and if a villein was professed as a monk, the lord could not seise him, but might maintain a similar action against the superior of the convent who admitted him.—*Litt.* sec. 202.; 2 *Bl. Com.* 95, 96.

no actual or full seizin in Butler and his ancestors, of Crouch and his ancestors as villeins regardant, is found, but only a seizin in law, and the lord having let an hundred years pass without redeeming, the villein or his issue cannot after that seise them." *

His conduct on the trial of the Duke of Norfolk.

The only criminal case of much celebrity in which Lord Chief Justice Dyer was concerned was the trial of Thomas, Duke of Norfolk, for high treason in assisting the claim of Mary Queen of Scots to the crown of England. On that occasion, he attended with the other judges to assist the Lord High Steward and the Peers, who were to pronounce on the fate of the noble prisoner.

The Duke, when arraigned, having prayed that counsel might be assigned to him, and cited the case of Humphrey Stafford, Duke of Buckingham, as a precedent in point, Sir James Dyer said, —

"My Lord, that case of Humphrey Stafford, *in primo* Henry VII., was about pleading of sanctuary, for that he was taken out of sanctuary at Culneham, which belonged to the Abbot of Abingdon; so the question was, whether he should be allowed sanctuary in that case, and with that form of pleading, which was matter of law: in which case he had counsel, and not upon the fact of high treason; but only for the allowance of sanctuary, and whether it might be allowed, being claimed by prescription, and without showing any former allowances in Eyre; but all our books do forbid allowing of counsel in treason."

Duke. "I beseech you, weigh what case I stand in. I stand here before you for my life, lands, and goods, my children, and my posterity; and that which I esteem most of all, for my honesty. I am unlearned; if I ask anything, and not in such words as I ought, I beseech you bear with me, and let me have that favour the law allows me. If the law does not allow me counsel, I must submit me to your opinions. I beseech you, con-

* Dyer, 266. pl. 11. Villeins in gross, as well as villeins regardant, were considered real property. Littleton thus defines villeins in gross: "If a man or his ancestors, whose heir he is, have been seised of a villein, and of his ancestors as of villeins in gross, time out of memory of man, these are villeins in gross." (*Litt.* sec. 182.) Villeinage is supposed to have finally disappeared in the reign of James I., but there is great difficulty in saying when it ceased to be lawful, for there has been no statute to abolish it; and by the old law, if any freeman acknowledged himself in a court of record to be a villein, he and all his after-born issue and their descendants were villeins. — *Litt.* sec. 185.

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A. D. 1580.

sider of me. My blood will ask vengeance if I be unjustly condemned. I honour your learnings and your gravities; I beseech you have consideration of me, and grant me what the law will permit me."

The other judges confirmed the rule as laid down by the Chief Justice of the Common Pleas. He does not appear afterwards to have interfered, and he cannot be considered answerable for the unjust conviction which followed.*

If ruffled by any annoyance in the discharge of his judicial duties, he prayed to Heaven for composure, and when he returned home he played an air on the virginals.

> "For publique good, when care had cloid his minde,
> The only joye, for to repose his sprights,
> Was musique sweet, which showd him well inclind;
> For he that dooth in musique much delight
> A conscience hath disposed to most right;
> The reason is, her sound within our eare
> A sympathie of heaven we thinke we heare."†

Charge against him for arbitrary conduct as Judge of Assize.

There was one charge brought against him for arbitrary conduct as Judge of Assize. He always, according to the fashion of the times, *rode* the same circuit, and he chose the MIDLAND. He seems to have rendered himself unpopular upon it by rigidly discountenancing the jobs and oppressions of magistrates, and perhaps by the prejudices and partialities which are apt to influence a judge who becomes too familiar with those among whom he is to administer justice. At last, a "supplication," or memorial, from the justices of Warwickshire, containing nine heads of complaint against him, was presented to the Queen and the Privy Council. They were chiefly of a frivolous nature, as, for example, "that, a gun going off accidentally during the assizes, he accused the justices of a general slackness of their duties, saying, 'they ruled the country as pleased them, and that there was nothing with them but *sic volo, sic jubeo.*'" In his written answer, now extant among the MSS. of the Inner Temple, he says, "As to the shooting once of a gun in the time of the assizes, I am sure I was not so greatly offended, if it were not of purpose done; nor were these words *sic volo, sic jubeo*, used by me in the sense alleged." He justifies himself at great length for what he had done, in supporting a

* 1 St. Tr. 957—1042. † Whetstones.

poor widow against the tyranny of a cruel knight, backed by other justices; and he thus concludes, —

"All which premises being true, as indeed they are, I ask judgment of the said Lords of the Council, and all others indifferent, whether I had just cause ministered unto me by the defaults of the justices and government of the shire, and slackness of her Majesty's service, to be angry and vehemently moved to choler. And although I did say *in excessu meo*, 'omnis homo mendax' (as David said), yet for mine age and long continuance there, which hath been above twenty years in that circuit, I am rather to be borne with than complained of."

Luckily for Dyer, Sir Thomas Bromley, lately appointed Lord Chancellor, was his fast friend, so that due weight was given to his defence, and he was allowed to continue in the exercise of his office.

His death. March 24. 1582.

But, about two years afterwards, he encountered an enemy whom no Chief Justice or Chancellor has been able to conquer — DEATH. Being struck by a sudden disease, while still in the full possession of his faculties, he expired at Great Stoughton, in the county of Huntingdon, in the 71st year of his age. In the parish church there may still be seen a monument erected to his memory by his nephew, with the following inscription: —

"DEVERO tumulum quid statuis, Nepos,
Qui vivit volitatque ora per omnium?
Exegit monumenta ipse perennia,
In quels spirat adhuc; spirat in his themis,
Libertas, Pietas, Munificentia.
En decreta, libros, vitam, obitum senis!
Æternas statuas! Vivit in his themis,
Libertas, Pietas, Munificentia.
Æternas statuas has statuit sibi:
Æternis statuis cedite marmora!"

Among his contemporaries Dyer was universally esteemed the most perfect model of a Judge for learning, integrity, and abilities. The eulogium of Camden is only the echo of the public voice: "JACOBUS DIERUS," says that annalist, "*in communi placitorum tribunali Justiciarius Primarius, qui animo semper placido et sereno omnes judicis æquissimi partes implevit; et juris nostri prudentiam commentariis illustravit.*"

Whetstones particularly lauds the disinterested exercise of his patronage: —

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"Fit men he did in office ever place,
And ofte put by his freends and neerest kin,
Affirming, though the gifte were in his grace,
'The common-weale cheef intrest had therein,
And therefore meet the worthy should it win:'
Words like himself, who favoured publique good,
Before their gaine that were spronge of his blood."

He bequeathed his "REPORTS" to his nephews, who published them soon after his death, with a dedication to Lord Chancellor Bromley, in which they say—

Publication of his Reports.

"Quamvis supervacaneum fortasse videri possit (ratione præsertim rei ipsius habitâ, Authorisque facultate perspectâ) Protectorem et Patronum adscribere; tamen cum mors nobis Authoris vitam inviderit, multosque hæc nostra ætas protulerit, quibus cordi est alienæ industriæ obtrectare, opere precium existimavimus huic nostræ orbitati alterum patrem parentemque adsciscere, quem quidem te (vir insignissime) ut aptissimum, ita et paratissimum fore humillimè obsecrare tandem statuimus."

In an English address "To the Students of the Common Laws of this realm," the editors express a wish "that the good acceptation and friendly thankfulnesse of all such as are to receive knowledge and fruit thereby, may appeare such as the late reverend Judge and painefull Author thereof may receive the guerdon worthie his exquisite and painfull travaile." We have likewise "LECTORI CARMEN," which, after comparing DYERUS to the bee, who collects honey for others, thus proceeds:—

"Fasciculum causas omnes congessit in unum
Curia quas lustris sex celebrata dedit.
Edidit has alter, fructus ut postera proles
Perciperet, tanto qui placuere viro,
Edidit ut semper post funera viveret author:
Quem rapuit studiis mors inamica piis."

I am afraid that the hope of immortality from LAW REPORTS is visionary. But Dyer may really be considered the Shakspeare of Law Reporters, as he had no predecessor for a model, and no successor has equalled him. As yet his fame flourishes, and those who are most competent to appreciate his merit have praised him the most. Thus writes that great lawyer, Sir Harbottle Grimston: "If we have failed in the number of the persons reporting, it hath been amply recompensed in the grandeur and authority of one single author, SIR JAMES DYER, Chief Justice of the Com-

mon Pleas, by whose great learning and assiduous study the Judgments and Law Resolutions have been transmitted and perpetuated until the 24th year of the late Queen Elizabeth."*

Sad fate of the last of his house.

He was married to Margaret, daughter of Sir Maurice à Barrow, and relict of the celebrated philologist Sir Thomas Elyot, author of "The Governor." By her he had no issue. His estates went to a collateral branch of his family, which flourished for several generations, and was honoured with a baronetcy; but is now extinct. The last male representative of the Chief Justice ended his days in a workhouse; whereas it was expected, in the reign of Queen Mary, that in future times the DYERS would be more distinguished than the MONTAGUES. — Rather than to be ancestor of dukes or of kings, it is more glorious to deserve the praise quaintly bestowed on this great and good man: —

> "Alive, refúge of those whom wronge did paine,
> A DYER such as *dy'de* without a *stayne*." †

Sir Robert Catlyne Chief Justice of the King's Bench.

His descent from Cataline the conspirator.

I must now return to the Court of King's Bench, in which, after the very obscure Chief Justices who had presided there in the latter part of the reign of Henry VIII., and in the reigns of Edward VI. and of Queen Mary, Queen Elizabeth placed a distinguished man, whose name is still held in reverence by lawyers, although he has not gained an historical reputation — SIR ROBERT CATLYNE.‡ His supposed extraction is a burlesque upon heraldic pedigrees, for his ancestor, more distinguished than any of the Companions of the Conqueror, has been said to be no other than the conspirator LUCIUS CATILINA, who, instead of having fallen in battle, as is related by Sallust, escaped into Britain, and left descendants in Kent, a province which had reached a considerable degree of civilisation before it was visited by Julius Cæsar. Fuller, though much disposed to puff the Chief Justice, is modestly contented with saying, "His name hath some allusion to the Roman senator who was the *incendiary* of that state, though in nature far different, as who, by his wisdom and gravity, was a great *support* to his nation."§

* Preface to Cro. Car. † Whetstones.
‡ Spelt likewise Catlyn, Catelyn, Catalyn, Catlin, Catelin, and Cateline.
§ Worthies, i. 568.

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A.D. 1555.

Our Chief Justice certainly was descended from the Catlynes of Rounds in Northamptonshire, who had been long settled there, and were a branch of a family of the same name which had flourished from time immemorial in Kent. He was born at Bilbey in Leicestershire, having the bad or good luck to be the younger son of a younger brother, who had married the heiress of a small estate in this county.

Feast when he was called Serjeant.

I do not find any thing authentic of his early career, except that he studied law with extraordinary diligence in the Middle Temple. The first considerable distinction which he gained in public life seems to have been by the wonderful feast given in the year 1555, when he was called Serjeant,—the account of which fills many folio pages of Dugdale's ORIGINES JURIDICIALES. It was held soon after Queen Mary's marriage, and the object was to show to the Spanish nobles who accompanied Philip the riches and magnificence of England. There were seven barristers included in the same call, and — besides rings of great weight presented to the Queen, the officers of state and the judges, and large pecuniary contributions — each voluntarily furnished contingents in kind, of which the following is a sample: —

April 27. 1555.

"*Cates sent in by Mr. Catlyne.*

	£	s.	d.
"9 swans, each at 10*s.*	4	10	0
3 pheasants, at 4*s.*	0	12	0
Pigeons, 9 dozen and a half, at 18*d.* a dozen	0	14	3
Capons, 7 at 2*s.* 6*d.*	0	17	6
Pea chickens, 4 at 2*s.*	0	8	0
Red deer, rated at	0	10	0
Does, fat, 5, not valued.			
Claret wine, 1 hogshead	1	17	6
Quinces, 60	0	3	0"

Then follow turkey chicks, woodcocks, curlews, goodwits, knotts, plovers, larks, snipes, teals, and coneys, from the same donor. This, being a far more liberal donation than any of the other new serjeants furnished, materially added to the splendour of the entertainment, and was supposed to lay the foundation of the great advancement which was speedily bestowed upon Serjeant Catlyne.*

* The reader may like to see the dishes, and the prices of them, at one of the many tables laid for different degrees of guests: —

"A proportion for two mess of meat for the table prepared for the Lords of the King and Queen's Privy Councell; and certain Spanish lords and gentlemen that accompanied them to the Feast:

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In the following year, he was promoted to the rank of Queen's Serjeant, and towards the end of Mary's reign he was made a Puisne Justice of the Court of Common Pleas. He had, from the first, a high judicial reputation, on account of the gravity of his deportment and his profound knowledge of the law; and, although inclining to the new doctrines in religion, he was so discreet as to conform to the creed of the Court, whatever that might be, following the example of the most approved statesmen of that age. This gave no offence to Elizabeth; and upon her accession, having taken her Prime Minister and her Chancellor from the same class of conformists, she made Sir Robert Catlyne, who was now a professed Protestant, Chief Justice of England.

Nov. 1556. He is made a Puisne Judge. Oct. 1558.

Chief Justice. Jan. 22. 1559.

He held the office with increasing respect above fifteen years; but it is only from the general praises bestowed upon him by contemporary writers, and from the traditions of Westminster Hall, that we appreciate his merits, for he was not an author himself, and there are hardly any reports of King's Bench decisions in his time.

		£	s.	d.
The first course, two mess of meat.	A standing dish of wax, representing the Court of Common Pleas, artificially made	4	0	0
	A spuld of brawn for either mess			
	Boiled capons in white broth, 2 at a mess	0	5	0
	Swans roasted, 2; each mess one	1	0	0
	Bustards, 2; each mess one	1	0	0
	Chemet pies, 8; to each mess 4			
	Pikes, 4; to each mess 2	0	10	0
	Capons roasted, 4; to each mess 2	0	10	0
	Venison baked, 4 large pasties; every mess 2			
	Hern and bittern, each mess 2	0	16	0
	Pheasants roasted, 4; each mess 2	0	16	0
	Custards, 2			
Second course, two mess of meat.	A standing dish of wax, to each mess one	4	0	0
	Jellies planted, 2 dozen			
	Cranes, 2, each mess one	1	0	0
	Partridges, 12; for each mess six	0	16	0
	Red deer, 4 pasties; each mess two	0	16	0
	Certain large joules of sturgeon, to each mess one			
	Woodcocks and plovers, 12 each mess	0	6	8
	Quince pies, baked, 8; each mess four			
	Rabbit suckers, 12; each mess six	0	4	0
	Snipes roasted, 12; each mess six	0	3	4
	Larks, 3 dozen; each mess a dozen and a half	0	2	0
	March-panes, 2; each mess one[1]	0	6	8

[1] Sweet cakes. Lawyers' feasts now-a-days are not to be despised; but are nothing, compared with those of our predecessors in the times of the Tudors.

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A.D. 1571. He assists at the trial of the Duke of Norfolk.

The only state trials in the early part of Elizabeth's reign were those of the Duke of Norfolk and of Hickford his secretary. At the former, which took place before the Lord High Steward and the Peers, Lord Chief Justice Catlyne, attending as assessor, was several times appealed to for his opinion. When the point had been settled about the assignment of counsel, the prisoner said —

"I am now to make another suit to you, my Lords the Judges: I beseech you tell me if my indictment be perfect, and sufficient in law?" *Lord C. J. C.:* "For the sufficiency of your indictment it hath been well considered by us all, and we have all with one assent resolved, and so do certify you, that if the causes in the indictment expressed be true in fact, the indictment is wholly and in every part sufficient." *Duke:* "Be all the points treasons?" *Lord C. J. C.:* "All be treasons, if the truth of the case be so in fact." *Duke:* "I will tell you what moveth me to ask you this. I have heard of the case of the Lord Scrope; he confessed the indictment, and yet traversed that the points thereof were not treasons." *Lord C. J. C.:* "My Lord, he had his judgment for treason upon that indictment, and was executed in the reign of Henry V."

Q. whether the fact of a witness being a Scot renders him incompetent, or only goes to his credit?

A deposition or confession of the Bishop of Ross being afterwards offered in evidence for the Crown, the Duke objected that he was a Scot, and that, having admitted himself to be guilty of high treason against his own sovereign, he ought not to be received as a witness:—

Lord C. J. C.: "Though a Scot, he is a Christian, and he has not been attainted or outlawed of treason, nor yet indicted." *Duke:* "It is worse; he has confessed treason. Bracton, if I mistake not, says that witnesses must be *legales homines*; and so cannot strangers be, like the Bishop of Ross." *Lord C. J. C.:* "Bracton, indeed, is an old writer of our law, and by Bracton he may be a witness; a stranger, a bondman, may be a witness. Ask you all the Judges here?" *All the Judges:* "He may, he may!" *Duke:* "You shall not recover lands upon the evidence of a stranger, much less convict of treason." *Lord C. J. C.:* "This would be a strange device, that Scots may not be witnesses; for so, if a man would commit treason, and make none privy but Scots, the treason were unpunishable." *Duke:* "In case of treason they may be heard as witnesses for the Queen, although it resteth in the breast of the Peers whether or no to afford credit unto them."

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A. D. 1571.

Catlyne cannot be said to have violated the rules of evidence; for written depositions or confessions of persons alive were then considered clearly admissible in capital cases, and the circumstance of *alienage*, as he stated, could only go to their credit; but he can hardly be defended from the charge of consciously perverting the law of treason.

The chief matter urged against the prisoner was, that he had sent a sum of money into Scotland to assist the party there which took the side of Mary, the absent Queen, against the Regent, whom Elizabeth patronised, there being peace between the two countries.

Duke of Norfolk: "The statute of Edward III. only makes it treason to compass the death of the sovereign, or to levy war against him, or to aid his enemies; and there is no proof that I did any of these things." *Lord C. J. C.:* "Usage is the best expounder of the law; and we know that, as this statute has been expounded, you are guilty if you have said or done as the witnesses tell of you." *Duke:* "Supposing it proved that I sent money to the Lord Harris, the subject of the Queen of Scots, how can that be aiding an enemy of our Lady the Queen of England? May a subject be the Queen's Majesty's enemy, while the Prince of that subject is her friend and in amity with her?" *Lord C. J. C.* "In some cases it may be so; as in France, if the dukedom of Britany should rebel against the French King, and should (during the amity between the French and Queen's Majesty) invade England, those Britons would be the French King's subjects and the Queen's enemies, though the French King remaineth in amity; and so in your case."

Now this is clearly sophistical reasoning; for although an Englishman, who joined the invading army from Britany, would certainly have been guilty of high treason, it would have been for levying war against her in her realm, and not for adhering to her enemies.* The Judges must all have felt some remorse when, sentence of death being passed upon the prisoner, he said — "I trust shortly to be in better company. God doth know how true a heart I bear to her

* During the Canadian rebellion, I gave an opinion as Attorney General, which was acted upon, that an armed band of American citizens who invaded our territory without the authority of their government were liable to be treated as traitors.

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Majesty, and how true a heart to my country, whatsoever this day hath been falsely objected against me." *

The trial of Robert Hickford, the Duke's secretary, for high treason, came on soon after at the bar of the Court of King's Bench at Westminster. In fact, nothing more could be proved against him than that he had written in cipher, and deciphered some letters which had passed between his master and Mary Queen of Scots and the Bishop of Ross; but he deemed it more prudent to plead *guilty*, and to pray for mercy. Lord Chief Justice Catlyne then passed sentence upon him in a very long and elaborate discourse, from which I shall make a few extracts to show the taste of the times: —

Chief Justice Catlyne passes sentence on Hickford.

"Thou art a gentleman wise and well learned: I wish to God there had been in thee as much loyalty and truth as there is learning and other good qualities and gifts of God; then hadst thou not fallen into this great fault and misery. But there have been evil enticers, evil schoolmasters, evil seedsmen; they have brought thee from truth and good estate to untruth, treason, and wretchedness; where, before, you and others were of good name and fame, they have brought you to infamy; of loyal, good, and true subjects, they brought you to the name and state of disloyal traitors. A great blot to be a traitor, and the greatest infamy that can be. It is the chiefest point of the duty of every natural and reasonable man, which by the gift of reason differeth from a beast, to know his prince and head — to be true to his head and prince. All the members are bound to obey the head; every man is bound to risk life, to lay out and expend goods, lands, and possessions — to forsake father, mother, kindred, wife, and children in respect of preserving the prince; for in defending the prince they preserve father, mother, kindred, wife, children, and all. All the duties to father, mother, friends, kindred, children, yea, to a man's wife, that is his own flesh, are all inferior to the duty that a subject oweth to his prince. If in any case they shall allure a man from his prince they must be forsaken — they must come behind; it must be said '*vade post me, Satana.*' We must first look unto God, the High Prince of all princes, and then to the Queen's Majesty, the second prince and God's deputy, and our sovereign prince on earth. You are wise and learned, as your master was; but the evil seedsmen, the evil

* 1 St. Tr. 957—1042.

seducers and enticers, have wrought evil effect in you both. The great good Seedsman hath sowed in you good gifts, learning, knowledge, and good quality to serve Him, your prince, and your country withal; as it is said in the Gospel, *Bonus seminator seminavit semen bonum*, but *supervenit inimicus et seminavit zizania;* the good seedsman sowed good seed, but there came the enemy, and he sowed darnel, cockle, and noisome weeds. Such wicked seedsmen have been in England; if they had sown the right seed for their own use, *the seed of hemp, and felt of it*, they had received according to their deserving. If they had been handled as they deserved, they should long ago have had of their own due seed, *hemp*, bestowed upon them, *meet seed for such seedsmen.*"

He proceeds to explain how certain foreign ambassadors at the Court of England were the wicked seedsmen, and to prove that they might lawfully be treated with a *hempen cravat;* giving, as an illustration, the case of M. de Marveilles, ambassador of Francis I., "who was beheaded *jure gentium*, at Milan, for conspiring against the prince to whom he was accredited." Thus he concludes that topic: —

"May messengers conspire treason against princes to whom they be sent? Treason to princes is not their message; it is no lawful cause of their sending; if of their own heads they presume it, their own heads must answer for it. As for them that seek fame by treason, and by seeking the destruction of princes, what shall sound that fame? Shall the golden Trump of Fame that Chaucer speaketh of? No! but the black Trump of Shame shall blow out their infamy for ever."*

His death and burial.

Lord Chief Justice Catlyne spent the rest of his days in the quiet routine of his judicial duties, and died in the autumn of the year 1574, at his country seat at Newenham, in Bedfordshire, where, according to the directions of his will, he was privately buried, without any monument being erected to his memory.

With the opportunity of amassing great riches, he died poor, leaving behind him a high reputation for disinterestedness, as well as learning and ability. He would not accept any grant of church lands; and although his place of resi-

* 1 St. Tr. 1044. I must say, for the honour of Westminster Hall, that, notwithstanding the quaintness of this composition, I doubt whether the pulpit, the stage, or parliament, had yet produced anything better. Every one must admire its rhythmical cadences.

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dence had been the site of a priory, he had purchased it at a fair price, paid from his honest earnings. * A descendant of his having spoken disrespectfully to a Chief Justice, whose hands were not so clean, and being thus rebuked, "I expected not such treatment from one whose kinsman was my predecessor in this court, and a great lawyer," made answer, "My Lord, *he* was a very honest man, for he left a small estate." †

His descendants.

He married Anne, daughter of Thomas Bowles, Esq., by whom he had an only daughter and heir. She became the wife of Sir John Spencer, of Althorpe, in the county of Northampton; and from them descend the Dukes of Marlborough, so that the Russells, and most of the greatest families in England, may easily trace Sir Robert Catlyne in their pedigree,—if they should be disappointed in their wish to go up to the CONSPIRATOR.

Sir Christopher Wray.

The office of Chief Justice of the King's Bench was held during the next eighteen years by SIR CHRISTOPHER WRAY, of whom little is known, except from the Law Reports and the Parliamentary History. His parentage even is doubtful.

His doubtful parentage.

There are two statements on the subject in the books of the Heralds' College: one says that he was "the son of Thomas Wray, of Richmondshire, by the daughter and heir of Richard Jackson, in the county of York;" and the other, that he was "the natural son of Sir Christopher Wray, Vicar of Hornby, *by a wench in a belfry*, and brought up to the study of the law by a brother of his reputed father, who was a servant of the Lord Conyers of Hornby." The latter is the more probable story; and in the Visitation of the county of Lincoln by the Heralds in 1634, there is a pedigree of the family, signed by his grandson and heir, Sir John Wray, Bart., commencing with the Chief Justice, and giving the arms of Wray, which were granted to him without any quartering of the arms of Jackson; whereas, if legitimate, to the representation of that family he would have been entitled and he would have laid claim.

He seems, under the disadvantages of birth, to have raised himself by energy and fair character, without shining abilities.

* Hyson's Bedfordshire, p. 89. † Fuller's Worthies, ii. 568.

The first perfectly authentic information we have of him is, that he took the degree of the coif in 1567, and soon after he was made a Queen's Serjeant.*

A.D. 1571. He is a Serjeant-at-law.

In April, 1571, he was returned to parliament; and he must then have been very high in his profession, for he was elected Speaker of the House of Commons, — a post, in those days, always conferred upon an eminent practitioner at the bar. His speech to the Queen, when presented to her for confirmation, is extant, but too long and dull to be copied. He began by proving the Queen's title to be Head of the Church, "from the remembrance of Lucius, the first Christian King of Britain, who, having written to Elutherius the Pope, 1300 years past, for the Roman laws, was answered that he had the Holy Scriptures, out of the which he might draw good discretion, *for that he was the Vicar of Christ over the people of Britain.*" After enumerating acts done by subsequent sovereigns to check the encroachments of the See of Rome, he says, "In the reports of the law we find that an excommunication of a certain person came from the Pope, under his leaden bull, and was showed in abatement of an action brought at common law; which, beside that it was of no force, the King and judges were of mind that he who brought it had deserved death, so to presume on any foreign authority; which authority being now by God's grace and her Highness's means abolished, and the freedom of consciences and the truth of God's word established, we ought greatly to thank God and her." Having discoursed very tediously concerning religion, government, and legislation, and quoted Plato "*de Legibus*," he concluded with a just compliment to Elizabeth, "that she had given free course to her laws, not requiring the stay of justice by her letters or privy seals, as heretofore sometimes hath been by her progenitors used; neither hath she pardoned any without the advice of those before whom the offenders have been arraigned, and the cause heard."

He is Speaker of the House of Commons.

The Queen's answer was very courteous to him; but for his guidance as Speaker she told him, that "the Commons would do well to meddle with no matters of state but such

* Dugd. Chron. Ser.

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A.D. 1574.

as should be propounded unto them, and to occupy themselves with other matters concerning the commonwealth."

Mr. Speaker Wray did his best to enforce obedience to this injunction, but, in spite of him, motions were brought forward about the abuse of the prerogative in granting monopolies, and the necessity for an act of parliament to settle

May 29.

the succession to the crown. At the close of the session she highly censured those audacious members of the nether house "for their arrogant and presumptuous folly, thus by superfluous speech spending much time in meddling with matters neither pertaining to them nor within the capacity of their understanding." *

However, no blame was imputed to Sir Christopher Wray; and, as a reward for his services, he was made a Puisne Justice of the Court of Common Pleas. †

When elevated to the bench, he was distinguished not only by great skill in his profession, but by a striking decency of demeanour, which gained him much respect from the bar and the bystanders.

On the death of Sir Robert Catlyne it was seen that troublous times were approaching, from Mary Queen of Scots, lawfully the heir presumptive and actually the pretender to the throne, becoming impatient of the captivity in which she had been long held, and from many being disposed at any risk to vindicate her claims. There was an equal dread of retaining her as a prisoner, and of setting her at liberty; and, as assassination and poisoning were reckoned un-English, the idea began to gain ground that it might be necessary to get rid of her by the forms of law, for which there were plenty of precedents in recent reigns. Lord Keeper Sir Nicholas Bacon, therefore, pointed out to Elizabeth the importance of having a safe man at the head of the administration of criminal justice, and he recommended to her Sir Christopher Wray, reminding her of the maxim which, with her approbation, he had adopted for his own motto, MEDIOCRIA FIRMA. She, ever prudent in judicial appointments,

* 1 Parl. Hist. 724.

† According to Dugdale, his patent bore date May 14., a fortnight before the prorogation; but I think this must be a mistake, for the common law judges never sat in the House of Commons except during the Commonwealth.

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unless (as in the case of giving the great seal to Sir Christopher Hatton) she was guided by her *heart* rather than her *head*, readily acquiesced, and, after the office had remained vacant a few weeks, Sir Christopher Wray, to the envy of the puisnies, was installed in it; for they all thought themselves superior to him, notwithstanding the high merits discovered in him by the Lord Keeper's harangue when he was sworn in.

He is made Chief Justice of the King's Bench.

The new Chief Justice fully justified the choice made of him. He was not at all puffed up by his elevation. In private life he continued remarkably courteous, but he would permit no solicitations, even from the most powerful, respecting causes which were to come before him. "Each man he respected in his due distance off the bench, and no man on it could bias his judgment."*

A.D. 1581. He tries Campion the Jesuit.

The first important trial at which he presided was that of Campion the Jesuit and the other priests accused along with him of a conspiracy, at the instigation of the Pope, for murdering the Queen, and for putting Mary in her place. In reading the report of it we are struck with the dextrous manner in which he obtained a conviction, by the display of great seeming calmness and forbearance. Campion was a hot-headed though very able man, and, stung by a sense of the groundlessness of the charge against him, was always breaking out in intemperate sallies. When arraigned, he wished, contrary to a well-known rule of procedure, to make a speech in defence of his innocence:—

Wray, L. C. J. "The time is not yet come wherein you shall be tried, and, therefore, you must now spare speech, and preserve it till then; at which time you shall have full liberty of defence, and me to sit indifferent between her Majesty and yourself: whereupon I counsel you now to say *Guilty* or *Not Guilty*."

The evidence was wholly insufficient to make out the charge of treason, and merely proved that the prisoners had come on a fanatical mission from Rome in the hope of reconverting the kingdom to the true faith.† The Chief Justice, however,

* Fuller.

† While Campion lay under accusation in the Tower, he was several times examined under torture, and gave such clever answers, that Elizabeth had a great curiosity to see him. "By her order he was secretly brought one evening from the Tower, and introduced to her at the house of the Earl of Leicester, in

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A.D. 1581.

by preserving the same tone, not only persuaded the jury, but the prisoners themselves, that he was their counsel, according to his duty as judge. Having allowed them to address the jury several times without interruption, he observed, "If you have any more to say, speak, and we will hear you until to-morrow morning. We would be loth you should have any occasion to complain of the Court, and therefore, if aught rest behind untold that may be available for you, speak, and you shall be heard with indifference." The report says, "They all thanked his Lordship, and said they could not otherwise affirm but they had found of the Court both indifference and justice."

He made short work of it when the jury had given in their verdict of GUILTY:—

Lord C. J.: "Campion, and the rest, what can you say why you should not die?" *Campion:* "The only thing that we have now to say is, that if our religion do make us traitors, we are worthy to be condemned; but otherwise have been, and are, as true subjects as ever the Queen had any." *Lord C. J.:* "You must go to the place from whence you came, and from thence you must be drawn on a hurdle to the place of execution, and there hanged by the neck, but not till you are dead," &c. &c. "And may the Lord convert you from your evil ways, and have mercy on your souls."*

A.D. 1584. Trial of William Parry for treason.

The next state criminal was William Parry, indicted before special commissioners for a plot to murder Queen Elizabeth. He had confessed being concerned in the plot, and had given a detailed account of it, but, having been employed as a spy, both by Burleigh and by the Court of Rome, it is doubtful whether, in this instance, he did not accuse himself falsely. Upon his arraignment he pleaded *Guilty*, trusting to a pardon; but, the plea being recorded, he became frightened, and wished to retract it. This indulgence the Court refused, and he was asked why judgment of death should not be awarded against him:—

the presence of that nobleman, of the Earl of Bedford, and of the two secretaries. She asked him 'if he acknowledged her for Queen?' He replied 'not only for Queen, but for *his lawful Queen*.' She then inquired 'if he believed that the Pope could excommunicate her lawfully?' He answered, that 'he was not a sufficient umpire to decide in a controversy between her Majesty and the Pope.'" — *Lingard*, viii. 147.

* 1 St. Tr. 1049—1088.

Parry: "I see I must die, because I am not settled." *Sir Christopher Hatton* (one of the commissioners): "What meanest thou by that?" *Parry:* "Look into your study and into your new books, and you shall see what I mean." *Sir Christopher:* "Thou doest not well to use such dark speeches, unless thou wouldst plainly utter what thou meanest thereby." *Parry:* "I care not for death; I will lay my blood among you."

Lord Chief Justice Wray was then called upon to pronounce the sentence, and spoke as follows:—

"Parry, you have been much heard, and what you mean by being '*settled*' I know not; but I see that you are so *settled* in popery, that you cannot *settle* yourself to be a good subject. Thou hast committed horrible and hateful treason against thy most gracious Sovereign and thy native country. The matter most detestable — the manner most subtle and dangerous. The matter was the destruction of a most sacred and an anointed Queen, thy sovereign and mistress; yea, the overthrow of thy country in which thou wast born, and of a most happy commonwealth whereof thou art a member. The manner was most subtle and dangerous beyond all that before thee have committed any wickedness against her Majesty. For thou, making show as if thou wouldst simply have uttered for her safety the evil that others had contrived, didst but seek thereby credit and access, that thou mightest take the after opportunity for her destruction. And for the occasions and means which drove thee on, they were most ungodly and villainous, as the persuasions of the Pope, of papists, and of popish books."

His Lordship, having indulged in a very lengthened tirade against the Pope, papists, and popish books, pronounced the usual sentence in high treason, which was executed a few days after, although the unhappy man declared that he was in truth innocent, and had only acted by orders of the Government to entrap others. He died unpitied.

—— "neque enim lex æquior ulla
Quam necis artifices arte perire suâ." *

Lord Chief Justice Wray was named in the commission for the trial of Anthony Babington, and in that for the trial of the Queen of Scots herself; but he did not take a leading part in either of them, being superseded by the zeal of Sir A.D. 1586.

* 1 St. Tr. 1095—1112.

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Thomas Bromley, who then held the Great Seal, and of Sir Christopher Hatton, who was eager to hold it.*

A. D. 1587. Wray presides in the Star Chamber on the trial of secretary Davison.

He presided in the Star Chamber, however, when the scandalous mockery was exhibited which arose out of the feigned resentment of Elizabeth on account of the execution of Mary. He then, for some temporary convenience, held the office of Lord Privy Seal as well as of Chief Justice, and so had precedence over several peers of high rank who attended. He must have been well aware that Secretary Davison, in sending off the warrant for the bloody deed to be done at Fotheringay, acted with the full concurrence of his colleagues, and in compliance with the wishes of his royal mistress; but he conducted the proceeding with all solemnity, as if a public functionary had acted in disobedience of orders, and had thereby brought obloquy upon the sovereign and calamity upon the state.

After the invectives of the Attorney General and the other counsel for the Crown, Davison mildly observed "that the warrant having passed the great seal by the Queen's express orders, it was to be executed as a matter of course, without further making her privy to the execution." Lord Chief Justice Wray exclaimed, "Mr. Davison, to call the warrant irrevocable you are deceived, for her Majesty might have revoked it at her pleasure." He then required all the councillors present to express their opinion, beginning with the junior, Sir Walter Mildmay, who, after enlarging upon the enormity of the offence, proposed for punishment a fine of 10,000 marks and perpetual imprisonment. The other councillors, up to the Archbishop of Canterbury, having made similar speeches, and approved of the proposed sentence, Wray, Chief Justice, likewise spoke in aggravation, contending that the Queen's express authority for executing the warrant ought to have been obtained, and that the secretary was alone answerable for Mary's death. Thus he concluded: —

"Surely I think you meant well, and it was *bonum*, but not *bene*. Finally, I agree that the punishment shall be as it was first of all assessed. But further I must tell you, that, for so much as the fault is yours, this prosecution declares her Majesty's

* 1 St. Tr. 1127. 1167.; Lives of Chancellors, vol. ii. chaps. xliv. xlv.

sincerity, and that she had no privity in your act, and that she was offended therewithal. Further, my Lords, I am directed to signify to you from her Majesty, that forasmuch as the Lords of the Council who concurred in that act were abused by Mr. Davison's relation in telling them that she was pleased, and what they did was for her safety, and they be sorrowful because they were abused by him, therefore her Majesty imputeth no fault to any, but only to him, and the rest she doth unburthen of all blame." *

This is certainly one of the most discreditable proceedings during the reign of Elizabeth, and reflects much disgrace on all concerned in it, except the veteran secretary Davison himself, who boldly defended his innocence, and exposed the duplicity and fraud of his persecutors, although he thereby deprived himself of all hope of mercy.†

A.D. 1589. Trial of the Earl of Arundel.

Lord Chief Justice Wray's last appearance at a state trial was when the young Earl of Arundel, son of the Duke of Norfolk, had been reconciled to his own wife after having been once the lover of Elizabeth, and was therefore brought to trial on a frivolous charge of treason for having wished success to the Spanish Armada. All the Judges attended as assessors; and the Chief Justice of the King's Bench, as their Coryphæus, gave the desired answers to the questions put to them, for the purpose of obtaining a conviction; but this caused such scandal, that Lord Burghley and Sir Christopher Hatton advised Elizabeth against staining her reputation with the blood of the son as well as of the father, and his life was spared, although he was detained in the Tower till he died, after an imprisonment of eleven years.‡

Death of Chief Justice Wray.

His character.

Lord Chief Justice Wray, between the Crown and the subject, by no means showed the independence for which he was celebrated between subject and subject; yet his partiality and subserviency in state trials did not shock his contemporaries, and are rather to be considered the reproach of the age than of the individual. Till Lord Coke arose in the next generation, England can scarcely be said to have seen a magistrate of constancy, who was willing to surrender his

* 1 St. Tr. 1229—1250.

† See his Apologetical Discourse to Walsingham, 1 St. Tr. 1239. In truth, Elizabeth's only hesitation about sending off the warrant arose from a wish and a hope that it might be rendered unnecessary by a private assassination.

‡ 1 St. Tr. 1250.

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place rather than his integrity. Wray, upon the whole, was very much respected, and he held his office with general approbation down to the time of his death. Sir George Croke, the reporter, says, "On the last day of Easter Term, 34 Eliz., died Sir Christopher Wray, Knt., Chief Justice of her Majesty's Court of Queen's Bench, — a most revered Judge, of profound and judicial knowledge, accompanied with a very ready and singular capacity and admirable patience."*

He left behind him a son, who, in 1612, was made a baronet by James I., and the title was inherited by his descendants till the year 1809, when the male line failing, it became extinct. I congratulate my readers that we have done with the Wrays.

* Cro. Eliz. 280.

CHAPTER VI.

CHIEF JUSTICES FROM THE DEATH OF SIR CHRISTOPHER WRAY TILL THE APPOINTMENT OF SIR EDWARD COKE BY JAMES I.

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Sir John Popham.

THE career of our next hero is capable of being made amusing as well as instructive. Although at one time in the habit of taking purses on the highway,—instead of expiating his offences at Tyburn he lived to pass sentence of death upon highwaymen, and to be a terror to evil-doers all over the kingdom.

His birth.

JOHN POPHAM was born in the year 1531, at Wellington, in the county of Somerset, a place which is distinguished as the cradle of the Wellesleys, and which the great ornament of his race and of his country has rendered for ever famous by taking from it his title of Duke, rather than from the scene of any of his glorious victories. He was of gentle blood, being a younger son of a family who, though simple squires and of Saxon origin, had for many generations been entitled to bear arms, and who had been settled on a small estate at Huntworth in the same county. While yet a child he was stolen by a band of gipsies, and remained some months in their society; whence some pretended to account for the irregular habits and little respect for the rules of property which afterwards marked one period of his life. His captors had disfigured him, and had burnt on his left arm a cabalistic mark which he carried with him to the grave. But his constitution, which had been sickly before, was strengthened by the wandering life he had led with these lawless associates, and he grew up to be a man of extraordinary stature and activity of body. We have no account of his schooling before he was sent to Baliol College, Oxford. Here he was very studious and well-behaved, and he laid in a good stock of classical learning and of dogmatic divinity. But when removed to the Middle Temple, that he might qualify himself for the profession of the law, he

At Oxford, A.D. 1547.

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got into bad company, and utterly neglected his juridical studies. He preferred theatres, gaming-houses, and other haunts of dissipation, to "readings" and "moots;" and once, when asked to accompany a friend to hear an important case argued by great lawyers in Westminster Hall, he declared that "he was going where he would see disputants whom he honoured more — to a bear-baiting in Alsatia." Unfortunately, this was not, as in a subsequent age, in the case of young Holt, afterwards Lord Chief Justice, merely a temporary neglect of discipline—"*a sowing of his wild oats.*" The remonstrances of his family and his friends, and the scrapes he got into, had no permanent effect in reclaiming him; and, although he sometimes seemed resolved on reformation, and had fits of application, he was speedily again seduced by his profligate companions, and he engaged in courses still more culpable.

A.D. 1551. His profligacy when a student in the Temple.

It seems to stand on undoubted testimony, that at this period of his life, besides being given to drinking and gaming, — either to supply his profligate expenditure, or to show his spirit, he frequently sallied forth at night from a hostel in Southwark, with a band of desperate characters, and that, planting themselves in ambush on Shooters' Hill, or taking other positions favourable for attack and escape, they stopped travellers, and took from them not only their money, but any valuable commodities which they carried with them,—boasting that they were always civil and generous, and that, to avoid serious consequences, they went in such numbers as to render resistance impossible. We must remember that this calling was not then by any means so discreditable as it became afterwards; that a statute was made during Popham's youth by which, on a first conviction for robbery, a peer of the realm or lord of parliament was entitled to benefit of clergy "*though he cannot read;*" * and that the traditions were still fresh, of robberies having been committed on Gad's Hill under the sanction of a Prince of Wales. † The extraordinary and almost incredible circumstance is, that Pop-

He takes to the road.

* 1 Ed. VI. c. 12. s. 14.

† If Popham's *raids* had been a little later, they might have been imputed to the First Part of Henry IV., which must have had at least as much effect as the Beggar's Opera in softening the horror excited by highway robbery.

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ham is supposed to have continued in these courses after he had been called to the bar, and when, being of mature age, he was married to a respectable woman. At last, a sudden change was produced by her unhappiness, and the birth of a child, for whom he felt attachment. We have the following account of his reformation from Aubrey: —

A.D. 1551—1560. He reforms.

"For severall yeares he addicted himselfe but little to the studie of the lawes, but profligate company, and was wont to take a purse with them. His wife considered her and his condition, and at last prevailed with him to lead another life and to stick to the studie of the lawe, which, upon her importunity, he did, beeing then about thirtie yeares old. He spake to his wife to provide a very good entertainment for his camerades to take his leave of them, and after that day fell extremely hard to his studie, and profited exceedingly. He was a strong, stout man, and could endure to sit at it day and night; became eminent in his calling, had good practice, was called to be a Serjeant and a Judge."*

Fuller, always anxious to soften whatever appears discreditable to any of his "Worthies," says of Popham, —

"In his youthful days he was as stout and skilful a man at sword and buckler as any in that age, and wild enough in his recreations. But, oh! if *Quicksilver* could really be *fixed*, to what a treasure would it amount! Such is *wild youth* seriously reduced to *gravity*, as by this young man did appear. He applied himself to more profitable fencing—the study of the laws; therein attaining to such eminency that he became the Queen's Attorney, and afterwards Lord Chief Justice of England."†

We are not told, and it would be vain to conjecture, what means he employed to redeem the time, and to qualify himself for the profession to which he now earnestly devoted himself. This we certainly know, that he became a consummate lawyer, and was allowed to be so by Coke, who depreciated all contemporaries, and was accustomed to sneer at the "book learning" of Francis Bacon.

His professional progress.

It might be supposed that Popham would get on particularly well in the Crown Court; but,—from the dread of encountering some of his old associates, or for some better reason, — till he was required, in the discharge of his official duty, to conduct public prosecutions, he confined himself entirely to civil

* Aubrey, iii. 492.

† Vol. ii. 284.

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A.D. 1571.

business; and the department of practice for which he chiefly laid himself out was "special pleading," or the drawing in writing the allegations of the plaintiff and the defendant, till they ended in a *demurrer* referring a question of law to the judges, or in an *issue of fact* to be determined by a jury. To add to the gravity of his newly assumed character, he was eager to reach the dignity of the coif; and, after some opposition on account of the stories circulated against him, in 1571 he actually became *Serjeant Popham*. His feast was on a scale of extraordinary magnificence, and he furnished some very fine old Gascony wine, which the wags reported he had intercepted one night as it was coming from Southampton, destined for the cellar of an alderman of London.

However, in spite of such jibes, he acquired the reputation of being very skilful in conducting real actions, which were exclusively tried in the Court of Common Pleas, where he now practised; and his business steadily increased. He was likewise concerned in some cases in the Court of Wards and Liveries against the Crown; and Elizabeth, who had a regular report made to her of all suits in which her interests were concerned, expressed a wish that he might be taken into her service.

June 26. 1579. He is made Solicitor General

Accordingly, when Sir Thomas Bromley, who had been long her Solicitor General, was promoted to be Lord Chancellor, Popham succeeded him as Solicitor General. Now he was somewhat ashamed of the coif, of which he was once so proud, and, meaning henceforth to practise in the Court of Queen's Bench, he resorted to the unusual expedient of *unserjeanting* or *discoifing* himself; so he was once more "John Popham, Esquire."* He gave high satisfaction by the manner in which he conducted the Queen's business; and in the beginning of the year 1581 he was, on her recommendation, elected Speaker of the House of Commons. This appointment was substantially in the gift of the Government, and was very often bestowed on the Solicitor General for the time

and Speaker of the House of Commons.

* "*Joh. Popham* arm. exoneratus de nomine, statu, et gradu Serv. ad legem." (*Pat.* 21 Eliz. p. 2.) Serjeant Copley, when made Solicitor General and Attorney General, remained a Serjeant; and when become Lord Lyndhurst and Lord Chancellor, he wore the coif, and called the Serjeants his "brothers."

being, the Attorney-General attending as an assessor in the House of Lords, and being considered disqualified to sit as a representative of the people. CHAP. VI.

When the new Speaker demanded from the Queen liberty of speech for the Commons, and their other ancient privileges, she gave him an admonition "to see to it that they did not deal or intermeddle with any matters touching her person or estate, or church or government."* Jan. 18. 1581.

The very first motion made was by Paul Wentworth, the Puritan, for a public fast to be appointed by the House, and for a daily sermon, so that, beginning their proceedings with the service and worship of God, He might the better bless them in all their consultations and actions. After a long debate, the motion was carried by a majority of 115 to 100. The Queen was highly incensed at this, which she considered an encroachment on her prerogative as "Head of the Church," and rated Popham very roundly for presuming to put the motion from the chair. On a subsequent day he addressed the House, and said, "he was very sorry for the error that had happened, in resolving to have a public fast, and for her Majesty's great misliking of the proceeding. He advised them to send a submission to her Majesty, and to bestow their time, and endeavour thereafter during the session, in matters proper and pertinent for this House to deal in." He then asked the question, "whether the Vice Chamberlain should carry their submission to her Majesty?" And it was agreed to unanimously. Mr. Vice Chamberlain, to the great comfort of the Speaker and of the House, "brought answer of her Majesty's acceptance of the submission,—expressing at the same time some anxiety that they should not misreport the cause of her misliking, which was not that she objected to fasting and prayer, but for the manner—in presuming to order a public fast without her privity, which was to intrude upon her authority ecclesiastical."†

At the end of the session Mr. Speaker Popham presented

* 1 Parl. Hist. 811. This election of Speaker did not take place at the commencement of a parliament, but on account of the death of the Speaker during the parliament—an event which does not seem to have happened before, and which caused much perplexity.

† 1 Parl. Hist. 813.

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to the Queen all the public bills passed, amounting to the unexampled number of fifteen; and in a long speech, in which he explained and praised them, he prayed the Queen graciously to assent to them, thus concluding—"I do further most humbly beseech your Highness, in the name and behalf of the Commons of your realm, that you will have a vigilant and provident care of the safety of your most royal person against the malicious attempts of some mighty foreign enemies abroad, and the traitorous practices of most unnatural disobedient subjects both abroad and at home, envying the blessed and most happy and quiet government of this realm under your Highness, upon the thread of whose life only, next under God, dependeth the life and whole state and stay of every your good and dutiful subjects."*

A.D. 1581. His address to the Queen at the end of the session.

This was Popham's last parliamentary effort, as he never again sat in the House of Commons, and in the House of Lords he was condemned to silence.

June 1. He becomes Attorney General.

Soon after the prorogation he succeeded Sir Gilbert Gerrard as Attorney General, and had Sir Thomas Egerton (afterwards Lord Ellesmere) for his Solicitor. Difficult times came on, but these law officers always rose with the occasion, and brought the important state prosecutions in which they were engaged to a fortunate issue.

A.D. 1585.

The new Attorney General was called upon to take part in a solemnity which seems very strange to us. In that age, when parliament rarely met, and there were no newspapers in which ministers could give their explanation of any public occurrence, or defend themselves from any charge orally circulated against them, it was usual to have a grand assemblage in the Star Chamber, to which the nobility, the Lord Mayor and aldermen of London, and other notabilities, were invited, and then the different members of the government (without any opponent) made speeches in their own justification and in their own praise. Henry Percy, Earl of Northumberland, a Roman Catholic, much attached to the interests of Queen Mary, having been kept for several years a close prisoner in the Tower, had been shot through the head by three slugs, and was found dead in his bed on the night

Proceeding in the Star Chamber on the death of the Earl of Northumberland.

* 1 Parl. Hist. 820.

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after his guard had been changed by the orders of Sir Christopher Hatton, the Vice Chamberlain. Notwithstanding a verdict by the coroner's jury of *felo-de-se*, a rumour was spread, and very generally credited, that he had been assassinated, because he was considered dangerous to the state, and there was no evidence upon which he could be brought to an open trial. A meeting was accordingly called in the Star Chamber, attended by all the great officers of state, from the Lord Chancellor to the Vice Chamberlain; and, says the report,—

June 23. 1585.

"The audience was very great of knights, esquires, and men of other quality. The Chancellor declared that, lest, through the sinister means of such persons as be evil affected to the present estate of her Majesty's government, some bad and untrue conceits might be had, as well of the cause of the Earl's detainment as of the manner of his death, it was thought necessary to have the truth thereof made known in that presence. He therefore required her Majesty's learned counsel to deliver at large the particularities both of the treasons, and in what sort the Earl had murdered himself. Then began John Popham, Esq., her Majesty's Attorney General."

Mr. Attorney, not bound to prove any of his allegations, and not fearing any reply, but having it all his own way, proceeds with a lengthened narrative, showing that it was out of the unexampled clemency of her Highness that the deceased had not long before been convicted as a traitor, and that, from the dread of a public trial and execution, he had died by his own hand.

Then spoke various Lords of the Council,—and the whole case was at last summed up by Sir Christopher Hatton, the suspected party, who, having bitterly inveighed against the deceased Earl, declared—

"That God by his just judgment had for his sins and ingratitude taken from him his spirit of grace, and delivered him over to the enemy of his soul, who brought him to that most dreadful and horrible end whereunto he is come; from which God of his mercy defend all Christian people, and preserve the Queen's Majesty from the treasons of her subjects, that she may live in all happiness to see the ruin of her enemies abroad and at home; and that she and we, her true and loving subjects, may be

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always thankful to God for all his blessings bestowed upon us by her, the only maintenance of his holy gospel among us."*

A.D. 1586.

Popham conducted the trials of all those charged as being implicated in Babbington's conspiracy, which were meant to prepare the public mind for the trial of the unhappy Mary herself. I will give a little specimen of these proceedings from *Tilney's case.* The charge against him was, that he had planned the murder of Queen Elizabeth in her coach. The chief evidence consisted of a confession of Abington, an avowed accomplice, in which he said that "Tilney was disposed to kill the Queen;" and that Babbington, on his own trial, said the day before, "Tilney would have had her Majesty set upon in her coach."

Tilney's case.

Tilney. "No! I said not so; only at the Three Tuns, in Newgate Market, I said 'it might be her Majesty might be set upon in her coach,' and I said no more. But that proves not I did consent." *Popham, A. G.:* "You have said enough, if we had no other evidence against you." *Tilney:* "How so?" *Popham, A. G.:* "Because you have confessed high treason; your words prove that you were devising on the manner of her death." *Tilney:* "I tell you there is no such matter intended in my words. If a servant which is faithful, knowing where his master's money is, do say, 'If I would be a thief I could rob my master, for in such a place his money is,' this proves not that he would rob his master albeit he used such words. And so, though I said 'she might be set upon in her coach,' it proveth not that I assented to the same; for I protest before God I never intended any treason in my life." *Anderson, C. J.* (the presiding Judge): "But if a servant, knowing where his master's money is, among thieves which are devising to take away the master's money, do say, 'this way my master's money may be taken,' and be in view when it is taken, I say that he is accessory. And you, Tilney, being amongst traitors that were devising how to kill her Majesty, showed by what means her Majesty might be killed. This manifestly proves your assent. Therefore let the jury consider of the evidence."

* 1 St. Tr. 1111—1128. Yet these exhibitions do not seem to have had much effect, for although I believe this charge of assassination to be unfounded, Sir Walter Raleigh, in a letter soon after written to Sir Robert Cecil, assumes it as a fact known to both of them, that the Earl of Northumberland was murdered by the contrivance of Hatton. — *Murdin.* 811.

Upon this summing up, a verdict of GUILTY was immediately pronounced, and the prisoner was executed.*

A.D. 1586.

Popham was present in the court at Fotheringay during the trial of the Queen of Scots, but did not interfere much in the proceeding, as the part of public prosecutor was acted in turn by Lord Chancellor Bromley, Lord Treasurer Burleigh, and Vice Chamberlain Hatton, who were sitting as her judges.†

He prosecutes secretary Davison for sending off the warrant for the execution of Queen Mary. A.D. 1588.

When poor Secretary Davison (intended to be the scapegoat for the sins of all concerned in her death) was brought before the Star Chamber, Popham enlarged on the enormity of his offence in sending off the warrant for her execution without the Queen's express orders, although she had signed it, and it had passed the Great Seal by her authority and with her approbation.‡

The last case in which Popham seems to have been concerned at the bar gives us a lively idea of the perils to which public liberty was exposed in the end of the sixteenth century. Sir Richard Knightly, the representative of an ancient family in Northamptonshire, had the misfortune to be a Puritan, and had printed and published, in a country town near his residence, a pamphlet, explaining very temperately his religious notions upon the proper observance of the Sabbath, and other such subjects. This gave deep offence to the bishops; and the author was prosecuted in the Star Chamber for it. Popham denounced it as a most seditious and libellous publication, "fit for a vice in a play, and no other,' but founded his reasoning chiefly on proclamations issued by her Majesty declaring "that no pamphlet or treatise should be published till previously seen and allowed; and further, that no printing shall be used any where but in London, Oxford, and Cambridge." It was admitted that for mere breach of a royal proclamation an indictment could not be supported in a court of common law; but the crown lawyers asserted, that it was part of the royal prerogative to issue proclamations on any subject, for the public good, and that those proclamations might be enforced by prosecutions in the Star Chamber. Nobody in the Star Chamber ventured to

* 1 St. Tr. 1127—1162. † Ibid. 1161—1228. ‡ Ibid. 1229.

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A.D. 1588.

controvert this doctrine; and, on the present occasion, the only justification or palliation offered by the defendant was, that he had been overpersuaded by his wife. *Popham, A. G.:* "Methinks he is worthy of the greater punishment for giving such a foolish answer as that he did it at his wife's desire." He escaped with a fine of 2000*l.**—Such cases should be borne in mind when we measure our gratitude to Sir Edward Coke, for stoutly denying the legality of proclamations to alter the law of the land, and for contending that disobedience to them could not lawfully be made the subject of a prosecution in the Star Chamber any more than in a court of common law. The proclamation and the prosecution conjoined were weapons to satisfy any tyrant, however rancorous his hatred of liberty, or however eagerly covetous of despotic power.

May 8. 1592.

Upon the death of Sir Christopher Wray, there was some hesitation about the nomination of his successor. Popham was an able man, and had done good service as Attorney General; but there was an awkwardness, after the stories that were circulated about his early exploits, in placing him at the head of the administration of criminal justice. Egerton, the Solicitor General, although of great learning and unexceptionable character, could not decently have been put over his head; Coke was already known to be an incarnation of the common law of England, but he could not be placed in such an exalted situation without having before served the crown, or given any sure earnest of sound political principles; and Sir Edmund Anderson, the Chief Justice of the Common Pleas, refused to give up his "pillow" for the thorns of the Queen's Bench. None of the *puisnies* were considered competent to preside on a trial for high treason, or to deliver a political harangue in the Star Chamber. The choice, therefore, fell upon Popham, who, on the 8th of June, 1592, received his writ as Chief Justice of England, was knighted by the Queen at Greenwich, and was sworn of the Privy Council along with Lord Keeper Puckering.

Popham is made Chief Justice of the King's Bench.

He held the office fifteen years, during the end of this and the beginning of the succeeding reign, and he was sup-

* 1 St. Tr. 1263—1272.

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A.D. 1592.

posed to conduct himself in it very creditably. The reproach urged against him was, extreme severity to prisoners. He was notorious as a "hanging judge." Not only was he keen to convict in cases prosecuted by the Government, but in ordinary larcenies, and, above all, in highway robberies, there was little chance of an acquittal before him. After a verdict of guilty in capital cases, he uniformly let the law take its course: even in clergiable felonies he was very strict about the "neck verse;" and those who were most excusable, on account of ignorance, he saw without remorse led off to the gallows, although if they had been taught to read they would have escaped with a nominal punishment. To such a degree had "damned custom" brazed his feelings. Some, indeed, who probably refine too much, have supposed that he was very desirous of showing to the public that he had no longer any sympathy with those who set the law at defiance, and that in this way he thought he made atonement to society for the evil example which formerly he had himself set.

On the trial of actions between party and party he is allowed by all to have been strictly impartial, and to have expounded the law clearly and soundly. There are many of his judgments in civil cases preserved, showing that he well deserved the reputation which he enjoyed, but they are all of such a technical character that they would be uninteresting, and indeed unintelligible, to the general reader. In speaking of him farther as a Judge, I must, therefore, confine myself to his appearances in the state trials which took place while he was Chief Justice to Elizabeth and James.

A.D. 1601. His gallant conduct in Essex's rebellion.

The most glorious day of his life was Sunday, the 8th of February, 1601, when he showed a courage, a prudence, and a generosity which ought for ever to render his name respectable. Elizabeth, in her palace at Whitehall, was informed that the young Earl of Essex had madly fortified his house in the Strand, and had planned an insurrection in the City of London. She immediately ordered Chief Justice Popham to accompany Ellesmere, the Lord Keeper, and summon the rebels to surrender. They went unattended, except by their mace-bearers. Essex having complained of ill treatment from his enemies, the Chief Justice said calmly,

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"The Queen will do impartial justice." He then, in the Queen's name, required the forces collected in the court-yard to lay down their arms and to depart, when a cry burst out of "Kill them! kill them!" The Earl rescued them from violence, but locked them up in a dungeon, while he himself sallied forth, in hopes of successfully raising the standard of rebellion in the City of London. After being kept in solitary confinement till the afternoon, Popham was offered his liberty on condition that the Lord Keeper should remain behind as a hostage; but the gallant Chief Justice indignantly refused this offer, and declared that he would share the fate of his friend. At length, upon news arriving of Essex's failure in the City, they were both liberated, and made good their retreat to Whitehall in a boat.

Essex's trial.

The trial of Essex coming on before the Lord High Steward and Court of Peers, Popham was both assessor and witness. First a written deposition, signed by him, was read, and then he was examined *vivâ voce*. He gave his evidence with temperance and caution, affording a striking contrast to the coarse vituperation of Coke, the Attorney General, and the ingenious sophistry of Bacon, who seemed to thirst for the blood of his benefactor.* Popham, though so severe against common felons, was touched by the misfortune of the high-born Essex, felt some gratitude for the tenderness he had experienced when in his power, and recommended a pardon, which would have been extended to him if the fatal ring had duly reached the hands of Elizabeth.

Mar. 1602. Trial of Essex's accomplices.

When Sir Christopher Blunt and several other commoners were tried for being concerned in this rebellion, Chief Justice Popham presided as Judge, and, at the same time, gave evidence as a witness, mixing the two characters in a manner that seems to us rather incongruous. He began with laying down the law: —

Lord C. J. "Whenever the subject rebelleth or riseth in a forcible manner to overrule the royal will and power of the sovereign, the wisdom and foresight of the laws of this land maketh this construction of his actions, that he intended to deprive the sovereign both of crown and life. If many do conspire

* Camd. Eliz. vol. ii. 225. 231.; 1 St. Tr. 1333—1360.

to execute treason against the prince in one manner, and some of them do execute it in another manner, yet their act, though different in the manner, is the act of all of them who conspire, by reason of the general malice of the intent." A.D. 1602.

Afterwards he entered into a dialogue with the witnesses and with the prisoners respecting the occurrences he had witnessed at Essex House. For example: *L. C. J.* "Sir Christopher, I should like to know why you stood at the great chamber door, with muskets charged and matches in your hands, which I well discerned through the key-hole?" He repeatedly put similar questions, and gave his own version of the different vicissitudes of the day till he was liberated. He then summed up to the jury, commenting on his own evidence, and, after the verdict of GUILTY, he thus addressed the prisoners:—

"I am sorry to see any so ill affected to the state as to become plotters and practisers against it. And my grief is the more in this — men of worth, service, and learning are the actors in the conspiracy. Shall it be said in the world abroad that, after forty-three years' peace under so gracious and renowned a prince, we Englishmen are become weary of her government, while she is admired by all the world beside? Some of you are Christians; and where, I pray you, did you ever read or hear that it was lawful for the subject to command or constrain his sovereign? It is a thing against the law of God and of all nations. Although your example be pitiful, yet by this let all men know and learn how high all actions treasonable do touch, and what they tend to. Now attend to the care of your souls, to keep them from death, whereof sin is the cause; and sin is not removed but by repentance, which being truly and heartily performed, then follows what the prophet David spake of, 'Blessed are they to whom God imputeth no sin.'"

Finally, he pronounced upon them the revolting sentence in high treason, and they were executed accordingly.*

On the death of Queen Elizabeth, Popham joined in acknowledging the title of the King of Scots as lawful heir to the throne, and he was reappointed to his office of Chief Justice of the King's Bench when the new Sovereign arrived in London. We are told that he still maintained his March 24. 1603. April 11.

* 1 St. Tr. 1400—1452.

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reputation for a strict enforcement of the criminal law, and did not suffer the sword of justice to rust in its scabbard.

A. D. 1603.

"In the beginning of the reign of King James, Popham's justice was exemplary on thieves and robbers. The land then swarmed with people which had been soldiers, who had never gotten (or quite forgotten) any other vocation. Hard it was for peace to feed all the idle mouths which a former war did breed: being too proud to beg, too lazy to labour, those infested the highways with their felonies; some presuming on their multitudes, as the robbers on the northern road, whose knot (otherwise not to be untyed) Sir John cut asunder with the sword of justice." *

November. Sir Walter Raleigh tried before Popham.

He presided at the trial of Sir Walter Raleigh for being concerned in the plot to place the Lady Arabella Stuart on the throne; but the greatest part of the disgrace which then fell on the administration of justice was truly imputed to Sir Edward Coke, the Attorney General, who will continue to be quoted to all generations for the brutality of character he exhibited in vituperating his gallant victim. The Chief Justice at first tried to restore good humour between the prisoner and the public prosecutor, by making an apology for the eagerness of both:—

Popham, C. J. "Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty for the service of the King, and you for your life; be valiant on both sides."

Afterwards, when Coke behaved as if he had considered this an exhortation to insult the man whom the law still presumed to be innocent, Popham joined with the other judges in trying to repress him, till "Mr. Attorney sat down in a chafe, and would speak no more." Thereupon they were all afraid that the King would be displeased, and "they urged and entreated him to go on."

The rulings of Chief Justice Popham at this trial would seem very strange in our day, but in his they caused no surprise or censure. In the first place, he decided — against an able argument from the prisoner, who conducted his own defence — that, although the charge was high treason, it was sufficiently supported by the uncorroborated evidence of a single witness; and, secondly, that there was no occasion

* Aubrey, vol. iii. p. 490.

for this witness to be produced in court, or sworn, and that a written confession by him, accusing himself and implicating the prisoner, was enough to satisfy all the requisitions of common and statute law on the subject. Raleigh still urged that Lord Cobham, his sole accuser, should be confronted with him: —

Popham, C. J.: "This thing cannot be granted, for then a number of treasons should flourish; the accuser may be drawn in practice whilst he is in person." *Raleigh:* "The common trial in England is by jury and witnesses." *Popham, C. J.:* "If three conspire a treason, and they all confess it, here is never a witness, and yet they are condemned." *Raleigh:* "I know not how you conceive the law." *Popham, C. J.:* "Nay, we do not conceive the law, but we know the law." *Raleigh:* "The wisdom of the law of God is absolute and perfect. *Hoc fac et vives*, &c. Indeed, where the witness is not to be had conveniently, I agree with you: but here he may; he is alive, and under this roof. Susannah had been condemned if Daniel had not cried out, 'Will you condemn an innocent Israelite without examination or knowledge of the truth?' Remember it is absolutely the commandment of God: 'If a false witness rise up, you shall cause him to be brought before the judges; if he be found false, he shall have the punishment the accused should have had.' It is very easy for my Lord to accuse me, and it may be a means to excuse himself." *Popham, C. J.:* "There must not such gap be opened for the destruction of the King as there would be if we should grant this. You plead hard for yourself, but the laws plead as hard for the King." *Raleigh:* "The King desires nothing but the knowledge of the truth, and would have no advantage taken by severity of the law. If ever we had a gracious King, now we have; I hope, as he is, so are his ministers. If there be a trial in an action for a matter but of five marks value, a witness must be produced and sworn. Good my Lord, let my accuser come face to face, and see if he will call God to witness for the truth of what he has alleged against me." *Popham, C. J.:* "You have no law for it."

Practice of putting questions to the prisoner in criminal trials.

In examining the mode in which criminal trials were then conducted, it is likewise curious to observe that the practice of interrogating the accused, which our neighbours the French still follow and praise, prevailed in England. Many questions were put to Sir Walter Raleigh on this occasion, in the hope of entrapping him. On account of his great

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acuteness, they were rather of service to him; but they show how unequally this mode of striving to get at truth must operate, and how easily it may be abused. The verdict of GUILTY being recorded, Lord Chief Justice Popham said, —

"I thought I should never have seen this day, Sir Walter, to have stood in this place to give sentence of death against you; because I thought it impossible that one of so great parts should have fallen so grievously. God hath bestowed on you many benefits. You had been a man fit and able to have served the King in good place. It is best for a man not to seek to climb too high, lest he fall; nor yet to creep too low, lest he be trodden on. It was the poesy of the wisest and greatest councillor in our time in England, '*In medio spatio mediocria firma locantur.*'* You have been taken for a wise man, and so have shown wit enough this day. Two vices have lodged chiefly in you; one is an eager ambition, the other corrupt covetousness. Your conceit of not confessing anything is very inhuman and wicked. My Lord of Essex, that noble earl that is gone, who, if he had not been carried away by others, had lived in honour to this day among us, confessed his offences, and obtained mercy of the Lord; for I am verily persuaded in my heart he died a worthy servant of God. This world is the time of confessing, that we may be absolved at the day of judgment. You have no just matter of complaint that you had not your accuser come face to face; for such an one is easily brought to retract when he seeth there is no hope of his own life. It is dangerous that any traitors should have access to or conference with one another; when they see themselves must die, they will think it best to have their fellow live, that he may commit the like treason again, and so in some sort seek revenge. Your case being thus, let it not grieve you if I speak a little out of zeal and love to your good. You have been taxed by the world with the defence of the most heathenish and blasphemous opinions, which I list not to repeat, because Christian ears cannot endure to hear them, nor the authors and maintainers of them be suffered to live in any Christian commonwealth. You shall do well before you go out of the world to give satisfaction therein, and not to die with these imputations upon you. Let not any devil persuade you to think there is no eternity in heaven; for, if you think thus, you shall find eternity in hell fire."

* *Posy*, or motto, of Lord Keeper Bacon.

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Sentence of death was then pronounced. But, notwithstanding Raleigh's unpopularity from the part he had taken against the Earl of Essex, the hard treatment he had experienced on his trial excited such general sympathy in his favour, that his life was spared for the present; and the sad task was reserved to another Chief Justice, after the lapse of many years, to award that the sentence should be carried into execution.*

Jan. 27. 1606. The Gunpowder Plot.

Guy Fawkes, and his associates implicated in the Gunpowder Plot, were tried before Popham, but there was such clear evidence against them, that no question of law arose during the trial, and we are merely told that "the Lord Chief Justice of England,—after a grave and prudent relation and defence of the laws made by Queen Elizabeth against recusants, priests, and receivers of priests, together with the several occasions, progresses, and reasons of the same, and having plainly demonstrated and proved that they were all necessary, *mild, equal, and moderate,* and to be justified to all the world, — pronounced judgment." †.

March 28. 1606. Trial of Garnet, Superior of the Jesuits.

Popham's last appearance in a case of public interest was upon the trial of Garnet, the Superior of the Jesuits. Against him the evidence was very slender, and the Chief Justice was obliged to eke it out by unwary answers to dextrously-framed interrogatories. He succeeded so far as to make the prisoner confess that he was aware of the plot from communications made to him in the confessional; so that, in point of law, he was guilty of misprision of treason, by not giving information of what he had so learned: but Garnet still firmly denied ever having taken any part in the devising of the plot, or having in any manner encouraged it. At last, he said very passionately, —

"My Lord, I would to God I had never known of the Powder Treason; but, as He is my judge, I would have stopped it if I could." *Popham, C. J.:* "Garnet, you are Superior of the Jesuits; and if you forbid, must not the rest obey? Was not Greenwell with you half an hour at Sir Everard Digby's house when you heard of the discovery of your treason? And did you not there confer and debate the matter together? Did you not stir him

* 2 St. Tr. 1—62. † Ibid. 194.

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up to go to the rebels and encourage them? Yet you seek to colour all this: but that is a mere shift in you. Catesby was never far from you, and, by many apparent proofs and evident presumptions, you were in every particular of this action, and directed and commanded the actors; nay, I think verily you were the chief that moved it." *Garnet:* "No, my Lord, I did not." The report adds "Then it was exceedingly well urged by my Lord Chief Justice how he writ his letters for Winter, Fawkes, and Catesby, principal actors in this matchless treason, and how he kept the two bulls to prejudice the King, and to do other mischief in the realm; and how he afterwards burnt them when he saw the King peaceably come in, there being no hope to do any good at that time."

This was only an interlocutory dialogue during the trial, and no proof had been given of the facts to which the Judge, who was supposed to be counsel for the prisoner, had referred. His summing-up to the jury is not reported; and we are only told that, the verdict of GUILTY being found, "Then the Lord Chief Justice, making a pithy preamble of all the apparent proofs and presumptions of his guiltiness, gave judgment that he should be drawn, hanged, and quartered."* There was a strong temptation to all who desired Court favour to show extraordinary zeal on this occasion, for the fate of Garnet had excited deep interest all over Europe,—and the King himself, a large number of the nobility, and many members of the House of Commons, were present at the trial.

Death of Popham.

Popham, who had hitherto retained wonderful vigour, both of body and mind, was soon after struck by a mortal disease, and on the 1st of June, 1607, he expired, in the seventy-second year of his age. According to the directions left in his will, he was buried at Wellington, the place of his nativity.

I believe that no charge could justly be made against his purity as a judge; yet, from the recollection of his early history, some suspicion always hung about him, and stories, probably quite groundless, were circulated to his disadvantage. Of these, we have a specimen in the manner in

* 2 St. Tr. 217—358.

which he was said to have become the owner of Littlecote Hall, which in a subsequent age was the head-quarters of the Prince of Orange, and which Macaulay describes as "a manor house, renowned down to our own times, not more on account of its venerable architecture and furniture, than on account of a horrible and mysterious crime which was perpetrated there in the days of the Tudors." * The earliest narrative that I find of this atrocity, and of Lord Chief Justice Popham's connection with it, is by Aubrey: —

Legend respecting the manner in which he acquired the manor of Littlecote.

"Sir Richard Dayrell, of Littlecot, in com. Wilts, having got his lady's waiting woman with child, when her travell came sent a servant with a horse for a midwife, whom he was to bring hoodwinked. She was brought, and layd the woman; but as soon as the child was borne, she saw the knight take the child and murther it, and burn it in the fire in the chamber. She having done her businesse was extraordinarily rewarded for her paines, and went blindfold away. This horrid action did much run in her mind, and she had a desire to discover it, but knew not where 'twas. She considered with herself the time she was riding, and how many miles she might have rode at that rate in that time, and that it must be some great person's house, for the roome was twelve foot high; and she should know the chamber if she sawe it. She went to a justice of peace, and search was made. The

* History of England, ii, 542. In the notes to the 5th canto of Rokeby, there is an interesting account of the appearance which the place now presents, and which is probably exactly the same which it presented when it was occupied by Lord Chief Justice Popham: —"Littlecote House stands in a low and lonely situation. It is an irregular building of great antiquity, and was probably erected about the time of the termination of feudal warfare, when defence came no longer to be an object in a country mansion. Many circumstances, however, in the interior of the house, seem appropriate to feudal times. The hall is very spacious, floored with stones, and lighted by large transom windows. Its walls are hung with old military accoutrements that have long been left a prey to rust. At one end of the hall is a range of coats of mail and helmets, and there is on every side abundance of old-fashioned pistols and guns, many of them with matchlocks. Immediately below the cornice hangs a row of leathern jerkins, made in the form of a shirt, supposed to have been worn as armour by the vassals. A large oak table, reaching nearly from one end of the room to the other, might have feasted the whole neighbourhood, and an appendage to one end of it made it answer at other times for the old game of shuffle-board. The rest of the furniture is in a suitable style, *particularly an arm-chair of cumbrous workmanship, constructed of wood, with a high back and triangular seat, said to have been used by Judge Popham in the reign of Elizabeth.* In one of the bedchambers, which you pass in going to the long gallery hung with portraits in the Spanish dresses of the 16th century, is a bedstead with blue furniture, which time has now made dingy and threadbare, and in the bottom of one of the bed curtains you are shown a place where a small piece has been cut out and sewn in again, serving to identify the same with the horrible story belonging to it."

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very chamber found. The knight was brought to his tryall; and, to be short, this Judge had this noble house, parke, and manor, and (I thinke) more, for a bribe to save his life. Sir John Popham gave sentence according to lawe, but being a great person and a favourite he procured a *noli prosequi*."*

* Aubrey, iii. 493. Subsequent writers have no better ground to proceed upon, and it would be unfair to load the memory of a judge with the obloquy of so great a crime upon such unsatisfactory testimony. Walter Scott publishes the following version of the story, "exactly as told in the country:"— "It was on a dark night in the month of November, that an old midwife sat musing by her cottage fireside, when on a sudden she was startled by a loud knocking at the door. On opening it she found a horseman, who told her that her assistance was required immediately by a person of rank, and that she should be handsomely rewarded, but that there were reasons for keeping the affair a strict secret, and therefore she must submit to be blindfolded, and to be conducted in that condition to the bedchamber of the lady. With some hesitation the midwife consented; the horseman bound her eyes, and placed her on a pillion behind him. After proceeding in silence for many miles, through rough and dirty lanes, they stopped, and the midwife was led into a house, which, from the length of her walk through the apartments, as well as the sounds about her, she discovered to be the seat of wealth and power. When the bandage was removed from her eyes, she found herself in a bedchamber, in which were the lady on whose account she had been sent for, and a man of a haughty and ferocious aspect. The lady was delivered of a fine boy. Immediately, the man commanded the midwife to give him the child, and, catching it from her, he hurried across the room and threw it on the back of the fire that was blazing in the chimney. The child, however, was strong, and by its struggles rolled itself off upon the hearth, when the ruffian again seized it with fury, and, in spite of the intercession of the midwife, and the more piteous entreaties of the mother, thrust it under the grate, and, raking the live coals upon it, soon put an end to its life. The midwife, after spending some time in affording all the relief in her power to the wretched mother, was told that she must be gone. Her former conductor appeared, who again bound her eyes, and conveyed her behind him to her own home; he then paid her handsomely and departed. The midwife was strongly agitated by the horrors of the preceding night, and she immediately made a deposition of the fact before a magistrate. Two circumstances afforded hopes of detecting the house in which the crime had been committed: one was, that the midwife, as she sat by the bed-side, had, with a view to discover the place, cut out a piece of the bed curtain and sewn it in again; the other was, that, as she descended the staircase, she had counted the steps. Some suspicion fell upon one Darrell, at that time the proprietor of Littlecote House and the domain around it. The house was examined and identified by the midwife, and Darrell was tried at Salisbury for the murder. *By corrupting the judge he escaped the sentence of the law*, but broke his neck by a fall from his horse in hunting, in a few months after. The place where this happened is still known by the name of 'Darrell's stile,' and is dreaded by the peasant whom the shades of evening have overtaken on his way."

Walter Scott founds a beautiful ballad on this legend, but—instead of a midwife, skilled in the obstetric art, to assist the lady—introduces a more poetical character, "a friar of orders gray," to shrive her, and he sacrifices the mother instead of the child,—without saying a word of the trial before Popham. I copy the last three stanzas:—

"The shrift is done, the friar is gone
Blindfolded as he came:
Next morning all in Littlecote Hall
Were weeping for their dame.

Popham's portrait represented him as "a hudge, heavy, ugly man;" and I am afraid he would not appear to great advantage in a sketch of his moral qualities, which, lest I should do him injustice, I shall not attempt. In fairness, however, I ought to mention that he was much commended in his own time for the number of thieves and robbers he convicted and executed; and it was observed that, "if he was the death of a few scores of such gentry, he preserved the lives and livelihoods of more thousands of travellers, who owed their safety to this Judge's severity."*

His Reports.

Popham is to be reckoned among the English Judges who were authors, having compiled a volume of Reports of his decisions while he was Chief Justice of the King's Bench, beginning in the 34th & 35th of Elizabeth. Being originally in French, an English translation of them was published in the year 1682, but they are wretchedly ill done, and they are not considered of authority. We should have been much better pleased if he had given us an account of his exploits when he was chief of a band of freebooters.

He left behind him the greatest estate that ever had been amassed by any lawyer — some said as much as 10,000*l.* a year; but as it was not supposed to be all honestly come by, and he was reported even to have begun to save money when "the road did him justice," there was a prophesy that it would not prosper, and that "what was got over the Devil's back would be spent under his belly." Accordingly, we have the following account of his son John: — "He was the greatest house-keeper in England; would have at Littlecote four or five or more lords at a time. His wife, who had been worth to him 6000*l.*, was as vaine as he, and sayd 'that she had brought such an estate, and she scorned but she would live

"Wild Darrell is an altered man;
The village crones can tell,
He looks pale as clay, and strives to pray,
If he hears the convent bell.

"If prince or peer cross Darrell's way,
He'll beard him in his pride —
If he meet a friar of orders gray,
He droops and turns aside."

* Aubrey, iii. 498.

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as high as he did;' and in her husband's absence would have all the woemen of the countrey thither, and feaste them, and make them drunke, as she would be herselfe. They both dyed by excesse and by luxury; and by cosenage of their servants, when he dyed, there was a hundred thousand pounds in debt. This was his epitaph, —

His fortune.

"Here lies he who not long since
Kept a table like a prince,
Till Death came and tooke awaye,
Then ask't the old man *What's to pay?*"*

The family retained a remnant of the Chief Justice's possessions at Littlecote for two or three generations, and then became extinct.

Sir Thomas Fleming, the rival of Bacon.

The next Chief Justice of England affords a striking proof that though dulness be often considered an aptitude for high office, the elevation which it procures will not confer lasting fame. The greatest part of my readers never before read or heard of the name of THOMAS FLEMING; yet, starting in the profession of the law with FRANCIS BACON, he was not only preferred to him by attorneys, but by prime ministers, and he had the highest professional honours showered upon him while the immortal philosopher, orator, and fine writer continued to languish at the bar without any advancement, notwithstanding all his merits and all his intrigues. But Fleming had superior good fortune, and enjoyed temporary consequence, because he was a *mere lawyer*, — because he harboured no ideas or aspirations beyond the routine of Westminster Hall, — because he did not mortify the vanity of the witty, or alarm the jealousy of the ambitious.

His laboriousness.

He was the younger son of a gentleman of small estate in the Isle of Wight. I do not find any account of his early education, and very little interest can now be felt respecting it, although we catch so eagerly at any trait of the boyhood of his rival, whom he despised.† Soon after he was called to the bar, by unwearied drudgery he got into considerable

* Aubrey, iii. 494.

† He probably had not an academical education, as on the 7th of August, 1618, it was ordered by the convocation of the University of Oxford "that Sir Thomas Flemming, Lord Chief Justice of England, be created M. of A." — 2 *Wood's Ath. Ox.* 355.

practice; and it was remarked that he always tried how much labour he could bestow upon every case intrusted to him, while his more lively competitors tried with how little labour they could creditably perform their duty.*

He is made Solicitor General in preference to Lord Bacon.

In the end of the year 1594 he was called to the degree of serjeant, along with eight others, and was thought to be the most deeply versed in the law of real actions of the whole batch. It happened that, soon after, there was a vacancy in the office of Solicitor General, on the promotion of Sir Edward Coke to be Attorney General. Bacon moved heaven and earth that he himself might succeed to it. He wrote to his uncle, Lord Treasurer Burleigh, saying, "I hope you will think I am no unlikely piece of wood to shape you a true servant of." He wrote to the Queen Elizabeth, saying, "I affect myself to a place of my profession, such as I do see divers younger in proceeding to myself, and men of no great note, do without blame aspire unto; but if your Majesty like others better, I shall, with the Lacedimonian, be glad that there is such choice of abler men than myself." He accompanied this letter with a valuable jewel, to show off her beauty. He did what he thought would be still more serviceable, and, indeed, conclusive; he prevailed upon the young Earl of Essex, then in the highest favour with the aged Queen, earnestly to press his suit. But the appointment was left with the Lord Treasurer, and he decided immediately against his nephew, who was reported to be no lawyer, from giving up his time to profane learning, — who had lately made an indiscreet, although very eloquent, speech in the House of Commons, — and who, if promoted, might be a dangerous rival to his cousin, Robert Cecil, then entering public life, and destined by his sire to be prime minister. The cunning old fox then inquired who would be a competent person to do the Queen's business in her courts, and would give no uneasiness elsewhere; and he was told by several black-letter Judges whom he consulted, that "Serjeant

* He appears, however, to have been long unknown beyond the precincts of Westminster Hall. In Fleetewood's Diary, cited in Wright's Queen Elizabeth, ii. 418., there is the following entry under date 10th August, 1592:—"This day Mr. Recorder surrendered his office; the lot is now to be cast between Mr. Serjeant Druce and *one Mr. Flemmynge of Lincoln's Inn.*"

CHAP. VI.

A. D. 1595.

Fleming was the man for him." After the office had been kept vacant by these intrigues above a year, Serjeant Fleming was actually appointed. Bacon's anguish was exasperated by comparing himself with the new Solicitor; and, in writing to Essex, after enumerating his own pretensions, he says, " when I add hereunto the obscureness and many exceptions to my competitor, I cannot but conclude with myself that no man ever had a more exquisite disgrace." He resolved at first to shut himself up for the rest of his days in a cloister at Cambridge. A soothing message from the Queen induced him to remain at the bar; but he had the mortification to see the man whom he utterly despised much higher in the law than himself, during the remainder of this, and a considerable part of the succeeding, reign.

Fleming, immediately upon his promotion, gave up his serjeantship, and practised in the Court of Queen's Bench.* He was found very useful in doing the official business, and gave entire satisfaction to his employers.

At the calling of a new parliament, in the autumn of 1601, he was returned to the House of Commons for a Cornish borough; and, according to the usual practice at that time, he ought, as Solicitor General, to have been elected Speaker; but his manner was too " lawyer-like and ungenteel " for the chair, and Serjeant Croke, who was more presentable, was substituted for him.

He breaks down in the House of Commons, Nov. 20. 1601.

He opened his mouth in the House only once, and then he broke down. This was in the great debate on the grievance of monopolies. He undertook to defend the system of granting to individuals the exclusive right of dealing in particular commodities; but, when he had described the manner in which patents passed through the different offices before the Great Seal is put to them, he lost his recollection, and resumed his seat.

Bacon, now member for Middlesex, to show what a valuable Solicitor General the Government had lost, made a very gallant speech, in which he maintained that " the Queen, as she is our sovereign, hath both an enlarging and a restraining

* *Tho. Fleming* a statu et gradu servientis ad legem exoneratus. T. R. apud *Westm.* 5 Nov. Pat. 37 Eliz. p. 9. — *Dug. Chron. Ser.* 99.

power: for, by her prerogative she may, 1st, set at liberty things restrained by statute law or otherwise; and, 2dly, by her prerogative she may restrain things which be at liberty." He concluded by expressing the utmost horror of introducing any bill to meddle with the powers of the crown upon the subject, and protesting that "the only lawful course was to leave it to her Majesty of her own free will to correct any hardships, if any had arisen in the exercise of her just rights as the arbitress of trade and commerce in the realm." CHAP. VI. A.D. 1602.

This pleased her exceedingly, and even softened her ministers, insomuch that a promise was given to promote Fleming as soon as possible, and to appoint Bacon in his place. In those days there never existed the remotest notion of dismissing an Attorney or Solicitor General, any more than a Judge; for, though they all alike held *during pleasure*, till the accession of the House of Stuart the tenure of all of them was practically secure. An attempt was made to induce Fleming to accept the appointment of Queen's Serjeant, which would have given him precedence over the Attorney General; but this failed, for he would thereby have been considered as put upon the shelf, instead of being on the high-way to promotion. He refuses to resign the office of Solicitor General in favour of Bacon.

Elizabeth died, leaving Bacon with no higher rank than that of Queen's Counsel; and, on the accession of James I., Fleming was reappointed Solicitor General. April 2. 1603.

The event justified his firmness in resisting the attempt to shelve him, for in the following year, on the death of Sir William Peryam, he was appointed Chief Baron of the Exchequer. While he held this office, he sat along with Lord Chief Justice Popham on the trial of Guy Fawkes and the Gunpowder conspirators; but he followed the useful advice for subordinate judges on such an occasion — "to look wise, and to say nothing." He is made Chief Baron of the Exchequer by James I.

His most memorable judgment as Chief Baron was in what is called "The Great Case of Impositions." This was, in truth, fully as important as Hampden's Case of Ship-money, but did not acquire such celebrity in history, because it was long acquiesced in, to the destruction of public liberty, "The Great Case of Impositions."

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A.D. 1604.

whereas the other immediately produced the civil war. After an act of parliament had passed at the commencement of James's reign, by which an import duty of 2*s.* 6*d.* *per cwt.* was imposed upon currants, he by his own authority laid on an additional duty of 7*s.* 6*d.*, making 10*s.* *per cwt.* Bates, a Levant merchant, who had imported a cargo of currants from Venice, very readily paid the parliamentary duty of 2*s.* 6*d.* upon it, but refused to pay more; thereupon the Attorney General filed an information in the Court of Exchequer, to compel him to pay the additional duty of 7*s.* 6*d.*; so the question arose, whether he was by law compellable to do so? After arguments at the bar which lasted many days, —

Fleming, C. B., said: "The defendant's plea in this case is without precedent or example, for he alleges that the imposition which the King has laid is 'indebitè, injustè et contrà leges Angliæ imposita, and, therefore, he refused to pay it.' *The King*, as is commonly said in our books, *cannot do wrong*; and if the King seize any land without cause, I ought to sue to him in humble manner (*humillime supplicavit*, &c.), and not in terms of opposition. The matter of the plea first regards the prerogative, and to derogate from that is a part most undutiful in any subject. Next it concerns the transport of commodities into and out of the realm, the due regulation of which is left to the King for the public good. The imposition is properly upon currants and not upon the defendant, for upon him no imposition shall be but by parliament. The things are currants, a foreign commodity. The King may restrain the person of a subject in leaving or coming into the realm, and, *à fortiori*, may impose conditions on the importation or exportation of his goods. To the King is committed the government of the realm, and Bracton says, 'that for his discharge of his office God hath given him the power to govern.' This power is double — ordinary, and absolute. The ordinary is for the profit of particular subjects — the determination of civil justice; this is nominated by civilians *jus privatum*, and it cannot be changed without parliament. The absolute power of the King is applied for the general benefit of the people; it is most properly named *policy*, and it varieth with the time, according to the wisdom of the King, for the common good. If this imposition is matter of state, it is to be ruled by the rules of *policy*, and the King hath done well, instead of 'unduly,

unjustly, and contrary to the laws of England.' All commerce and dealings with foreigners, like war and peace and public treaties, are regulated and determined by the absolute power of the King. No importation or exportation can be but at the King's ports. They are his gates, which he may open or close when and on what conditions he pleases. He guards them with bulwarks and fortresses, and he protects ships coming hither from pirates at sea; and if his subjects are wronged by foreign princes, he sees that they are righted. Ought he not, then, by the customs he imposes, to enable himself to perform these duties? The impost to the merchant is nothing, for those who wish for his commodities must buy them subject to the charge; and, in most cases, it shall be paid by the foreign grower and not by the English consumer. As to the argument that the currants are *victual*, they are rather a delicacy, and are no more necessary than wine, on which the King lays what customs seemeth him good. For the amount of the imposition it is not unreasonable, seeing that it is only four times as much as it was before. The wisdom and providence of the King must not be disputed by the subject; by intendment they cannot be severed from his person. And to argue *a posse ad actum*, because by his power he may do ill, is no argument to be used in this place. If it be objected that no reason is assigned for the rise, I answer it is not reasonable that the King should express the cause and consideration of his actions; these are *arcana regis*, and it is for the benefit of every subject that the King's treasure should be increased."

He then at enormous length went over all the authorities and acts of parliament, contending that they all prove the King's power to lay what taxes he pleases on goods imported, and he concluded by giving judgment for the Crown.*

Historians take no notice of this decision, although it might have influenced the destinies of the country much more than many of the battles and sieges with which they fill their pages. Had our foreign commerce then approached its present magnitude, parliaments would never more have met in England,—duties on tea, sugar, timber, tobacco, and corn, imposed by royal proclamation, being sufficient to fill the exchequer,—and the experiment of ship-money would never have been necessary. The Chief Baron most certainly misquotes,

* 2 St. Tr. 371—394.

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A.D. 1604.

misrepresents, and mystifies exceedingly, but, however fallacious his reasoning, the judgment ought not to be passed over in silence by those who pretend to narrate our annals, for it was pronounced by a court of competent jurisdiction, and it was acted upon for years as settling the law and constitution of the country.

King James declared that Chief Baron Fleming was a judge to his heart's content. He had been somewhat afraid when he came to England that he might hear such unpalatable doctrines as had excited his indignation in Buchanan's treatise "De jure regni apud Scotis," and he expressed great joy in the solemn recognition that he was an absolute sovereign. Our indignation should be diverted from him and his unfortunate son, to the base sycophants, legal and ecclesiastical, who misled them.

Fleming appointed Chief Justice of the King's Bench. June 25. 1607.

On the death of Popham, no one was thought so fit to succeed him as Fleming, of whom it was always said that "*though slow, he was sure;*" and he became Chief Justice of England the very same day on which Francis Bacon mounted the first step of the political ladder, receiving the comparatively humble appointment of Solicitor General.*

His judgment in the case of the Postnati.

Lord Chief Justice Fleming remained at the head of the common law rather more than six years. During that time, the only case of general interest which arose in Westminster Hall, was that of the POSTNATI. As might be expected, to please the King he joined cordially in what I consider the illegal decision, that persons born in Scotland after the accession of James to the throne of England were entitled to all the privileges of natural-born subjects in England, although it was allowed that Scotland was an entirely separate and independent kingdom. Luckily, the question is never likely again to arise since the severance of the crown of Hanover from that of Great Britain; but if it should, I do not think that Calvin's case could by any means be considered a conclusive authority, being founded upon such reasoning as that "if our King conquer a Christian country, its laws remain till duly altered; whereas if he conquer an infidel country, the laws are *ipso facto* extinct, and he may massacre all the inhabitants." †

* Dug. Chron. Ser. 102.

† 2 St. Tr. 559—768.

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Lord Chief Justice Fleming took the lead in the prosecution of the Countess of Shrewsbury, before the Privy Council, on the charge of having refused to be examined respecting the part she had acted in bringing about a clandestine marriage in the Tower of London, between the Lady Arabella Stuart, the King's cousin, and Sir William Somerset, afterwards Duke of Somerset. He laid it down for law, that "it was a high misdemeanor to marry, or to connive at the marriage of, any relation of the King without his consent, and that the Countess's refusal to be examined was 'a contempt of the King, his crown, and dignity, which, if it were to go unpunished, might lead to many dangerous enterprises against the state.' He therefore gave it as his opinion, that she should be fined 10,000*l.*, and confined during the King's pleasure."*

A.D. 1607—1613. Prosecution of the Countess of Shrewsbury.

While this poor creature presided in the King's Bench, he was no doubt told by his officers and dependants that he was the greatest Chief Justice that had appeared there since the days of Gascoigne and Fortescue; but he was considered a very small man by all the rest of the world, and he was completely eclipsed by Sir Edward Coke, who at the same time was Chief Justice of the Common Pleas, and who, to a much more vigorous intellect and deeper learning, added respect for constitutional liberty and resolution at every hazard to maintain judicial independence. From the growing resistance in the nation to the absolute maxims of government professed by the King and sanctioned by almost all his Judges, there was a general desire that the only one who stood up for law against prerogative should be placed in a position which might give greater weight to his efforts on the popular side; but of this there seemed no prospect, for the subservient Fleming was still a young man, and likely to continue many years the tool of the Government.

In the midst of these gloomy anticipations, on the 15th day of October, 1613, the joyful news was spread of his sudden death. I do not know, and I have taken no pains to ascertain, where he was buried, or whether he left any descendants. In private life he is said to have been virtuous

Death of Chief Justice Fleming.

* 2 St. Tr. 765—778.

CHAP. VI.

A.D. 1613.

and amiable, and the discredit of his incompetency in high office ought to be imputed to those who placed him there, instead of allowing him to prose on as a drowsy serjeant at the bar of the Common Pleas, the position for which nature had intended him.* He dwindled the more rapidly into insignificance from the splendour of his immediate successor.

* I have since learned (but it is not worth while to alter the text) that he was buried at Stoneham in Hampshire; that his will, dated 21st July, 1610, was proved 30th October, 1613; that his eldest son intermarried with a daughter of Sir Henry Cromwell, and that their descendants remained seated at Stoneham for some generations. The Chief Justice appears to have had a residence in the Isle of Wight. The name of "Sir Thomas Fleming, L. C. J. of England," appears in the list of the members of a *Bowling-Green Club* established in the island, who dined together twice a week. (Worsley's Isle of Wight, p. 223.)

CHAPTER VII.

LIFE OF LORD CHIEF JUSTICE SIR EDWARD COKE, FROM HIS BIRTH TILL HE WAS MADE CHIEF JUSTICE OF THE COURT OF COMMON PLEAS.

CHAP. VII.

Merits of Sir Edward Coke.

We now come to him who was pronounced by his contemporaries, and is still considered, the greatest oracle of our municipal jurisprudence, — who afforded a bright example of judicial independence, — and to whom we are indebted for one of the main pillars of our free constitution. Unfortunately, his mind was never opened to the contemplations of philosophy; he had no genuine taste for elegant literature; and his disposition was selfish, overbearing, and arrogant. From his odious defects, justice has hardly been done to his merits. Shocked by his narrow-minded reasoning, disgusted by his utter contempt for method and for style in his compositions, and sympathising with the individuals whom he insulted, we are apt to forget that "without Sir Edward Coke* the law by this time had been like a ship without ballast;"* that when all the other Judges basely succumbed to the mandate of a Sovereign who wished to introduce despotism under the forms of juridical procedure, he did his duty at the sacrifice of his office; and that, in spite of the blandishments, the craft, and the violence of the Court of Charles I., he framed and he carried the PETITION OF RIGHT, which contained an ample recognition of the liberties of Englishmen — which bore living witness against the lawless tyranny of the approaching government without parliaments — which was appealed to with such success when parliaments were resumed, and which, at the Revolution in 1688, was made the basis of the happy settlement then permanently established. It shall be my object in this memoir fairly to delineate his career and to estimate his character.

* Words of Lord Bacon.

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His family.

Sir Edward Coke, like most of my Chief Justices, was of a good family and respectable connections. The early Chancellors, being taken from the Church, were not unfrequently of low origin; but to start in the profession of the law required a long and expensive education, which only the higher gentry could afford for their sons. The Cokes had been settled for many generations in the county of Norfolk. As the name does not correspond very aptly with the notion of their having come over with the Conqueror, it has been derived from the British word "Cock," or "Coke," a Chief; but, like "Butler," "Taylor," and other names now ennobled, it much more probably took its origin from the occupation of the founder of the race at the period when surnames were first adopted in England. Even in the reigns of Elizabeth and James I., Sir Edward's name was frequently spelt Cook. Lady Hatton, his second wife, who would not assume it, adopted this spelling in writing to him, and according to this spelling it has invariably been pronounced.* Camden has traced the pedigree of the family to William Coke of Doddington, in Norfolk, in the reign of King John. They had risen to considerable distinction under Edward III., when Sir Thomas Coke was made Seneschal of Gascoigne. From him, in the right male line, was descended Robert Coke, the father of Sir Edward. This representative of the family, although possessed of good patrimonial property, was bred to the law in Lincoln's Inn, and practised at the bar till his death, having reached the dignity of a bencher. He married Winifred Knightley, daughter and co-heiress of William Knightley, of Margrave Knightley, in Norfolk. With her he had an estate at Mileham, in the same county, on which he constantly resided, unless in term time and during the circuits.

His birth.

Here, on the 1st of February, 1551-2, was born Edward, their only son. He came into the world unexpectedly, at the parlour fire-side, before his mother could be carried up to her bed; and, from the extraordinary energy which he then displayed,

* It is amusing to observe the efforts made to disguise the names of trades in proper names, by changing *i* into *y*, by adding a final *e*, and by doubling consonants.

high expectations were entertained of his future greatness.* This infantine exploit he was fond of narrating in his old age. CHAP. VII.

His mother taught him to read, and he ascribed to her tuition the habit of steady application which stuck to him through life. In his tenth year he was sent to the free grammar school at Norwich. He had been here but a short time when he had the misfortune to lose his father, who died in Lincoln's Inn, and was buried in the church of St. Andrew, Holborn.† His mother married again; but his education was most successfully continued by Mr. Walter Hawe, the head master of his school, under whom he continued seven years, and made considerable proficiency in classical learning. He was more remarkable, however, for memory than imagination, and he had as much delight in cramming the rules of prosody in doggrel verse as in perusing the finest passages of Virgil. At school.

He had reached his sixteenth year before he went to the University — a late age, according to the custom of that time; but he afterwards considered it a great advantage that he never "*preproperously*" entered on study or business. On the 25th of October, 1567, he was admitted a pensioner of Trinity College, Cambridge. We learn nothing from himself or others of the course of study which he pursued. Whitgift, afterwards Archbishop of Canterbury, is said to have been his tutor, and he was no doubt well drilled in the dialectics of Aristotle; but he never displays the slightest tincture of science, and, unlike Bacon, who came to the same college a few years after him, and, while still a boy, meditated the reformation of philosophy, he seems never to have carried his thoughts beyond existing institutions or modes of thinking, and to have laboured only to comprehend and to remember what he was taught. He had a much better opinion than Bacon of A.D. 1567. At the University.

* "Prædicabat miri quidpiam ejus Genitura; Matrem ita subito juxta focum intercipiens et in thalamum cui suberat non moveretur. Locum ipsum ipse mihimet demonstravit." — *Spelm. Icenia sive Norfolciæ*, p. 150.

† Sir Edward, when Attorney General, caused a monument to be erected there to his memory, with an inscription beginning thus: —

"Monumentum Roberti Coke de Mileham, in Comitatu Norfolciæ Armig. Illustriss. Hospitii Lincolniensis quondam socii Primarii: Qui ex Winefridâ uxore sua, Gul. Knightley filiâ, hos suscepit liberos: Edwardum Coke, filium, Majestatis Regiæ Attornatum General.' &c.

"Obiit in Hospitio prædicto 15 die Nov. A.D. 1561., Eliz. 4. Etat. suæ 48."

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A.D. 1571.

the academical discipline which then prevailed, and in after life he always spoke with gratitude and reverence of his ALMA MATER. Yet he left Cambridge without taking a degree.

A student of law.

It might have been expected that he would now have resided in his country mansion, — amusing himself with hunting, hawking, and acting as a Justice of the Peace. But the family estates were charged with his mother's jointure and portions for his seven sisters; and, as he was early imbued with ambition and a grasping love of riches, he resolved to follow the profession of the law, in which his father was prospering when prematurely cut off. He therefore transferred himself to London, — not, like other young men of fortune, to finish his education at an Inn of Court, frequenting fencing-schools and theatres, — but with the dogged determination to obtain practice as a barrister, that he might add to his paternal acres, and rise to be a great judge.

A.D. 1572.

He began his legal studies at Clifford's Inn, an "Inn of Chancery," where, for a year, he was initiated in the doctrine of writs and procedure; and on the 24th of April, 1572, he was entered a student of the Inner Temple, where he was to become familiar with the profoundest mysteries of jurisprudence. He now steadily persevered in a laborious course, of which, in our degenerate age, we can scarcely form a conception. Every morning he rose at three, — in the winter season lighting his own fire. He read Bracton, Littleton, the Year Books, and the folio Abridgments of the Law, till the courts met at eight. He then went by water to Westminster, and heard cases argued till twelve, when pleas ceased for dinner. After a short repast in the Inner Temple Hall, he attended "readings" or lectures in the afternoon, and then resumed his private studies till five, or supper-time. This meal being ended, the *moots* took place, when difficult questions of law were proposed and discussed, — if the weather was fine, in the garden by the river side; if it rained, in the covered walks near the Temple Church. Finally, he shut himself up in his chamber, and worked at his commonplace book, in which he inserted, under the proper heads, all the legal information he had collected during the day. When

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nine o'clock struck he retired to bed, that he might have an equal portion of sleep before and after midnight. The Globe and other theatres were rising into repute, but he never would appear at any of them; nor would he indulge in such unprofitable reading as the poems of Lord Surrey or Spenser. When Shakspeare and Ben Jonson came into such fashion, that even "sad apprentices of the law" occasionally assisted in masques, and wrote prologues, he most steadily eschewed all such amusements; and it is supposed that in the whole course of his life he never saw a play acted, or read a play, or was in company with a player.

He first evinced his forensic powers when deputed by the students to make a representation to the Benchers of the Inner Temple respecting the bad quality of their *commons* in the hall. After laboriously studying the facts and the law of the case, he clearly proved that the cook had broken his engagement, and was liable to be dismissed. This, according to the phraseology of the day, was called "*the Cook's Case*," and he was said "to have argued it with so much quickness of penetration and solidity of judgment, that he gave entire satisfaction to the students, and was much admired by the Bench." *

A.D. 1578. He is called to the bar.

At this time the rules of the Inns of Court required that a student should have been seven years on the books of his society before he could be called to the bar†, but our hero's proficiency in his legal studies was so wonderful, that the Benchers of the Inner Temple resolved to make an exception in his favour, and on the 20th of April, 1578, called him to the bar when he was only of six years' standing.

His first brief. A.D. 1579.

His progress in his profession was almost as rapid as that of Erskine, 200 years afterwards; but, instead of being the result of popular eloquence, it arose from a display of deep skill in the art of special pleading. He himself has reported with much glee the case in which he held his first brief. Lord Cromwell, son of the famous Cromwell, Earl of Essex, the grand ecclesiastical reformer, had become leader of the

* See Lloyd's Worthies, ii. 189.

† Formerly the period had been eight years: Dug. Or. Jur. 159. Now (I think not wisely) it is reduced to three.

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Puritans, and wished to abolish all liturgies. He accordingly introduced into his parish church (Norlingham, in Norfolk), where he expected to meet with no opposition, two unlicensed preachers of the Genevese school, who denounced the Book of Common Prayer as impious and superstitious. The Reverend Mr. Denny, the vicar, remonstrating, Lord Cromwell said to him, "Thou art a false varlet, and I like not of thee." Upon which the vicar retorted, "It is no marvel that you like not of me, for you like of men who maintain sedition against the Queen's proceedings." For these words Lord Cromwell brought an action of SCAN. MAG. against the Vicar; and the *éclat* with which young Edward Coke had just been called to the bar having reached his own country, he was retained as counsel for the defendant. He drew a very ingenious plea of justification, but on demurrer it was held to be insufficient. He then moved in arrest of judgment by reason of a mis-recital in the declaration of the statute *De Scandalis Magnatum*, on which the action was founded; and, after a very learned argument, he obtained the judgment of the Court in his favour.*

A.D. 1580.

Soon after, he was appointed, by the Benchers of the Inner Temple, Reader of Lyon's Inn, an Inn of Chancery under their rule. Here he lectured to students of law and attorneys, with much applause, and "so spread forth his fame, that crowds of clients sued to him for his counsel."†

He is counsel in "Shelley's Case."

He filled this office three years, and before the end of that period he had placed himself at the very head of his profession, by his argument in the most celebrated case that has ever occurred respecting the law of real property in England,—a case now read with far more interest by true conveyancers, not only than MACBETH or COMUS, but than "the Judgment on Ship-money" or "the Trial of the Seven Bishops." Edward Shelley, being seised in tail general, had two sons, Henry and Richard. Henry died, leaving a widow *enceinte*. Edward suffered a recovery to the use of himself for life, remainder to the use of the heirs male of his body and the heirs male of such heirs male, and died before his daughter-in-law was de-

* The Lord Cromwell's case, 4 Rep. 12 b.
† Lloyd's State Worthies.

livered. Richard, the younger son, as the only heir male *in esse*, entered. The widow then gave birth to a son; and the great question was, whether he had a right to the estate rather than Richard his uncle? It was an acknowledged rule, that the title of one who takes by *purchase* cannot be divested by the birth of a child after his interest has vested in possession; but that the estate of one who takes by *descent*, may. The point, therefore, was, "whether Richard, under the uses of the recovery, took by purchase or by descent?" The case excited so much interest at the time, that, by the special order of Queen Elizabeth, it was adjourned from the Court of Queen's Bench, where it arose, into the Exchequer Chamber, before the Lord Chancellor and the twelve Judges. Coke was counsel for the nephew, and succeeded in establishing the celebrated rule, that "Where the ancestor takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs either in fee or in tail, '*heirs*' is a word of *limitation*, so that the ancestor has in him an estate of inheritance, and the heir takes by *descent*." *

His great success and professional profits.

Coke was thenceforth, while he remained at the bar, employed in every case of importance which came on in Westminster Hall, and he was in the receipt of an immense income, which gave him a greater power of buying land than is enjoyed even by an eminent railway counsel at the present day. He began to add manor to manor, till at length it is said the crown was alarmed lest his possessions should be too great for a subject. According to a tradition in the family,—in consequence of a representation from the Government, which in those times often interfered in the private concerns of individuals, that he was monopolising injuriously all land which came into the market in the county of Norfolk, he asked and obtained leave to purchase "one acre more," whereupon he became proprietor of the great "CASTLE ACRE" estate, of itself equal to all his former domains.

When he had been four years at the bar, he made a most

* This rule has ever since been rigorously adhered to, except by the Court of King's Bench in Perrin *v.* Blake; and that decision was reversed in the Exchequer Chamber.—4 Burr. 2579.; Bl. Rep. 672.; Dougl. 329.

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A.D. 1582. His first marriage.

advantageous marriage *, being the preferred suitor of Bridget Paston, daughter and co-heiress of John Paston, Esq., a young lady who had not only beauty, learning, and high connexion †, but who brought him, first and last (what he did not value less), a fortune of 30,000*l.* Although he was dreadfully punished when he entered the state of wedlock a second time, he lived in entire harmony with his first wife, who died, to his inexpressible grief, leaving him ten children.

A.D. 1585—1592. He is appointed Recorder of Coventry, &c.

His first professional honours were sure proof of the general estimation in which he was held, as they sprang not from intrigue or court favour, but from the spontaneous wish of great municipal communities to avail themselves of his services. In 1585 he was elected Recorder of Coventry; in 1586, of Norwich; and 1592, of London, the citizens of the metropolis being unanimous in their choice of him, and having conferred a retiring pension of 100*l.* a year to make way for him. At the same time, he was READER (or Law Professor) in the Inner Temple, by appointment of the Benchers; and he appears in this capacity to have given high satisfaction. In his note-book, still extant, he states that, having composed seven lectures on the *Statute of Uses*, he had delivered five of them to a large and learned audience, when the plague broke out, and that, having then left London for his house at Huntingfield in Suffolk, — to do him honour, nine Benchers of the Temple and forty other Templars accompanied him on his journey as far as Romford.

He retained the office of Recorder of London only for a few months, then resigning it on becoming a law officer of the Crown.

A.D. 1592. He is made Solicitor General.

Burleigh, always desirous to enlist in the public service those best qualified for it, had for some time been well aware of the extraordinary learning and ability of Mr. Edward Coke, and had been in the habit of consulting him on questions

* This event was supposed to have happened much later, but the following entry has been discovered in the parish register of Cookly, in Norfolk: — "1582. Edward Cooke, Esq., and Bridget Paston, the daughter of John Paston, Esq., were married the 13th of August, the year aforesaid."—*Johnson*, i. 66.

† She was of an ancient family in Norfolk, and nearly connected with the noble families of Rutland, Shrewsbury, Westmoreland, and Abergavenny.

of difficulty affecting the rights of the Crown. A grand move in the law took place in the month of May, 1592, on the death of Sir Christopher Hatton, when Sir John Puckering being made Lord Keeper, Sir John Popham Chief Justice of England, and Sir Thomas Egerton Attorney General, — Coke, in his 41st year, became Solicitor General to the Queen. But he never seems, like his great rival, to have enjoyed Elizabeth's personal favour. His manners were not prepossessing, and out of his profession he knew little; while Francis Bacon was a polished courtier, and had taken "all knowledge for his province."

Not being sooner appointed a law officer of the Crown, Coke had escaped the disgrace of being concerned against the Queen of Scots, and the scandalous attempt of prerogative lawyers — of which Elizabeth herself was ashamed — to convert the peevish speeches against her of that worthy old soldier, Sir John Perrot, into overt acts of high treason. This last trial was still pending when the new Solicitor General was sworn in, but he was not required to appear in it*; and the world remained ignorant of the qualities he was to exhibit as public prosecutor, till the arraignment of the unfortunate Earl of Essex.

He is elected Speaker of the House of Commons. Feb. 19. 1593.

He was in the meanwhile to appear in a capacity which politicians in our time would think rather inconsistent with his functions as a servant of the Crown. From the expenses of the Spanish war, the Queen was driven, after an interval of several years, to call a new parliament; and the freeholders of Norfolk, proud of their countryman, now evidently destined to fill the highest offices in the law, returned him as their representative, the election being, as he states in a note-book still extant, "unanimous, free, and spontaneous, without any solicitation, or canvassing, on my part."

The Commons, when ordered to choose a Speaker, fixed upon the new Solicitor General, it being thought that his great legal knowledge would supply the defect of parliamentary experience. When presented at the bar for the royal approbation, he thus began his address to Elizabeth: —

* 1 St. Tr. 1315.

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A.D. 1593.

"As in the heavens a star is but *opacum corpus* until it hath received light from the sun, so stand I *corpus opacum*, a mute body, until your Highness's bright-shining wisdom hath looked upon me, and allowed me." He goes on to "disqualify" himself at great length, deploring the unlucky choice of the Commons: — "Amongst them," says he, "are many grave, many learned, many deep wise men, and those of ripe judgments; but I am untimely fruit, not yet ripe, but a bud scarcely blossomed. So as I fear me your Majesty will say '*neglecta frugi eleguntur folia*, amongst so many fair fruit you have plucked a shaken leaf.'"

The Lord Keeper, after taking instructions from the Queen, said, —

"Mr. Solicitor: Her Grace's most excellent Majesty hath willed me to signify unto you that she hath ever well conceived of you since she first heard of you, which will appear when her Highness elected you from others to serve herself. But by this your modest, wise, and well composed speech you give her Majesty further occasion to conceive of you above whatever she thought was in you. By endeavouring to deject and abase yourself and your desert, you have discovered and made known your worthiness and sufficiency to discharge the place you are called to. And whereas you account yourself *corpus opacum*, her Majesty, by the influence of her virtue and wisdom, doth enlighten you; and not only alloweth and approveth you, but much thanketh the Lower House, and commendeth their discretion in making so good a choice and electing so fit a man. Wherefore now, Mr. Speaker, proceed in your office, and go forward to your commendation as you have begun."

Mr. Speaker then made a florid oration on the Queen's supremacy, proving from history that this prerogative had always belonged to the sovereigns of England; and concluded by praying for liberty of speech, and the other privileges of the Commons. The Lord Keeper answered by the Queen's command: —

"Liberty of speech is granted you, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter, but your privilege is *aye* or *no*. Wherefore, Mr. Speaker, her Majesty's pleasure is, that if you

perceive any idle heads which will meddle with reforming the Church and transforming the commonwealth, and do exhibit any bills to such purpose, you receive them not until they be viewed and considered by those who it is fitter should consider of such things and can better judge of them."

Feb. 27. In spite of this caution, a member of the name of Morris produced a bill in the House of Commons, "for reforming abuses in the ecclesiastical courts, and to protect the clergy from the illegal oaths they were called upon to take by the bishops." Thereupon, Mr. Speaker Coke said, "In favour and free love above my merits or desert you have elected me, which should bind me to do all my best service, and to be faithful towards you. This bill is long, and if you put me presently to open it I cannot so readily understand it as I should. Wherefore, if it please you to give me leave to consider it, I protest I will be faithful, and keep it with all secresy." The House agreed to this proposal, and adjourned, it being now near mid-day.

His conduct as Speaker.

Mr. Speaker immediately posted off to court, pretending afterwards that he had been sent for by the Queen, and next morning declared from the chair that, although no man's eye but his own had seen the bill, her Majesty had desired him to say "she wondered that any should attempt a thing which she had expressly forbidden;" wherefore, with this she was highly displeased. "And," added he, "upon my allegiance I am commanded, if any such bill is exhibited, not to read it." Thus the bill was quashed; and Morris, the mover of it, being committed to the custody of Sir John Fortescue, the Chancellor of the Exchequer, was kept in durance for some weeks after parliament was dissolved.

One morning during the session, Coke, the Speaker, not appearing at the sitting of the House, great alarm arose; but in the mean time the clerk was directed to proceed to read the litany and prayers. A message was then received from the Speaker, that he was "extremely pained in his stomach, insomuch that he could not without great peril adventure into the air, but that he trusted in God to attend them next day." "All the members, being very sorry for Mr. Speaker's

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sickness, rested well satisfied; and so the House did rise, and every man departed away." *

A.D. 1593.

The dissolution took place on the 16th of April, when, the Queen being seated on the throne, the Speaker, in presenting the bill of supply for her assent, delivered an elaborate harangue on the dignity and antiquity of parliaments, which he concluded with the following ingenious comparison between the state and a bee-hive: —

His address to the Queen on the dissolution of parliament.

"*Sic enim parvis componere magna solebam.* The little bees have but one governor, whom they all serve; he is their king; he is placed in the midst of their habitation, *ut in tutissima turri.* They forage abroad, working honey from every flower to bring to their king. '*Ignavum fucos pecus à præsepibus arcent.*' The drones they drive away out of their hives, '*non habentes aculeos.*' And whoso assails their king in him '*immittunt aculeos, et tamen rex ipse est sine aculeo.*' Your Majesty is that princely governor and noble Queen whom we all serve. Being protected under the shadow of your wings, we live. Under your happy government we live upon honey, we suck upon every sweet flower; but where the bee sucketh honey, there also the spider draweth poison. But such drones we will expel the hive. We will serve your Majesty, and withstand any enemy that shall assault you. Our lands, our goods, our lives, are prostrate at your feet to be commanded." †

Who would suppose that this was the same individual who framed and carried the Petition of Right! He was not again a representative of the people for above twenty years, being, before another parliament met, in the office of Attorney General, then supposed to be a disqualification for sitting in the Lower House; and afterwards being successively Chief Justice of the Common Pleas and of the King's Bench. For his services in the chair he received a gratuity of 100*l.*; and he again devoted himself to his professional avocations, which had been considerably interrupted, although by no means discontinued, while he acted as Speaker.

A.D. 1594.

Things went on very smoothly till the month of April in the following year, when, on the appointment of Sir Thomas Egerton as Master of the Rolls, the office of Attorney General became vacant. Mr. Solicitor thought that, as a matter

* Sir Simon d'Ewes: Journal, 470.
† 1 Parl. Hist. 858—893.

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of course, he was to succeed to it; but there sprang up a rival, with whom he was in continual conflict during the remainder of this and the whole of the succeeding reign,—on whom, for deep injuries, he took deadly revenge,—but who, with posterity, has infinitely eclipsed his fame. Francis Bacon, nine years his junior in age, and eight years in standing at the bar, with much less technical learning, had, by literary attainments, and by the unprecedented powers of debate which he had displayed in the late parliament, created for himself a splendid reputation, and, without any steadiness of principle, had by his delightful manners gained the zealous support of many private friends. Among these, the most powerful was the young Earl of Essex, now the favoured lover of the aged Queen. He strongly represented, both to Elizabeth and her minister, the propriety of making Bacon at once the first law officer of the Crown, but was asked for "one precedent of so raw a youth being promoted to so great a place."* Coke was, very properly, appointed Attorney General; and, out of jealousy, meanly discouraged the proposal to make Bacon Solicitor General — an appointment which would have been unobjectionable. Amidst these intrigues, the office of Solicitor General remained vacant a year and a half, and it was at last conferred on Sir Thomas Fleming, characterised, as we have seen, by that mediocrity of talent and acquirement which has often the best chance of advancement.

Rivalry between Coke and Bacon for the office of Attorney General.

Coke is preferred.

In the two parliaments which afterwards met under Elizabeth†, Coke had only to sit on the Judges' woolsack in the House of Lords, and to give his advice, when asked, for the guidance of their Lordships on matters of law. But he was called upon to act a prominent part in the prosecution of state offenders. Towards the end of Elizabeth's reign, many individuals were committed on real or imaginary charges of being concerned in plots against the government or the person of the Sovereign; and, for the convenience of inflicting torture upon them to force a confession, their place of confinement was usually the Tower of London. Thither did Mr. Attor-

He examines state prisoners and superintends the infliction of torture.

* Naris's Life of Burleigh, iii. 436.

† 1597 and 1601.

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ney repair to examine them while under the rack; and whole volumes of examinations in these cases, written with his own hand, which are still preserved at the State Paper Office, sufficiently attest his zeal, assiduity, and hard-heartedness in the service. Although afterwards, in his old age, writing the "Third Institute," he laid down, in the most peremptory manner, that torture was contrary to the law of England, and showed how the "rack or brake in the Tower was first introduced there in the reign of Henry VI. by the Duke of Exeter, and so ever after called *the Duke of Exeter's daughter**—like his predecessor Egerton, and his successor Bacon, he thought that the Crown was not bound by this law; and, a warrant for administering torture being granted by the Council, he unscrupulously attended to see the proper degree of pain inflicted. I do not know that this practice reflects serious discredit on his memory. He is not accused of having been guilty, on these occasions, of any wanton inhumanity.

A.D. 1600. His brutal behaviour on the trial of the Earl of Essex.

But he incurred never-dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court. The first revolting instance of this propensity was on the trial of Robert, Earl of Essex, before the Lord High Steward and Court of Peers, for the insurrection in the City, with a view to get possession of the Queen's person and to rid her of evil counsellors. The offence, no doubt, amounted in point of law to treason; but the young and chivalrous culprit really felt loyalty and affection for his aged mistress, and, without the most distant notion of pretending to the crown, only wished to bring about a change of administration, in the fashion still followed in Continental states. Yet, after Yelverton, the Queen's ancient serjeant, had opened the case at full length, and with becoming moderation, Coke, the Attorney General, immediately followed him, giving a most inflamed and exaggerated statement of the facts, and thus concluding: "But now, in God's most just judgment, he of his earldom shall be 'ROBERT THE LAST,' that of the kingdom thought to be 'ROBERT THE FIRST.'" His natural arrogance I am afraid was heightened

* 3 Inst. 35.

on this occasion by the recollection that Essex, stimulated by an enthusiastic admiration of his rival, had striven hard to prevent his promotion to the office which he now filled. The high-minded, though misguided, youth exclaimed, with a calm and lofty air, "He playeth the orator, and abuses your Lordships' ears with slanders; but they are but fashions of orators in corrupt states."

This was a humiliating day for our "*order*," as Bacon covered himself with still blacker infamy by volunteering to be counsel against his friend and benefactor, and by resorting to every mean art for the purpose of bringing him to the scaffold.*

Coke in private life.

We must now take a glance at Coke in private life. He had no town house. During term time, and when occasionally obliged to be in London in vacation for official business, he slept in his chambers in the Temple. From the time of his marriage his home was at Huntingfield Hall, in the county of Suffolk, an estate he had acquired with his wife.

Death of his first wife.

On the 27th of June, 1598, he had the misfortune to lose her, she being then only in her thirty-fourth year. In his memorandum-book, kept for his own exclusive use, is to be found under this date the following entry: —

"Most beloved and most excellent wife, she well and happily lived, and, as a true handmaid of the Lord, fell asleep in the Lord and now lives and reigns in Heaven."

On the 24th of July she was buried in Huntingfield church, the delay being necessary for the pomp with which her obsequies were celebrated.

From ambition and love of wealth, probably, rather than from "thrift," —

> . . . . "the funeral bak'd meats
> Did coldly furnish forth the marriage tables."

His courtship of Lady Hatton.

There was then at court a beautiful young widow, only twenty years of age, left with an immense fortune and without children, highly connected, and celebrated for wit as

* 1 St. Tr. 1333—1384.

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well as for birth, riches, and beauty.* This was the Lady Hatton, daughter of Thomas Cecil, eldest son of Lord Burleigh, afterwards Earl of Exeter. She had been married to the nephew and heir of Lord Chancellor Hatton. Her first husband dying in 1597, as soon as she was visible she was addressed by her cousin Francis Bacon, then a briefless barrister, but with brilliant professional prospects, although he had "missed the Solicitor's place." Whether she thought him too "contemplative," I know not, but she gave him no encouragement; and his suit was not at all favoured by her relations, the Cecils, who were jealous of his superior abilities, and wished to keep him down, that there might be no political rival to Robert, the Treasurer's younger son, now filling the office of Secretary of State, afterwards Earl of Salisbury, and prime minister to James I. Bacon employed the powerful intercession of the Earl of Essex, who, prior to sailing on his expedition to the coast of Spain, wrote pressing letters in support of his suit to the lady herself, and to her father and her mother, saying that "if he had a daughter of his own he would rather match her with the accomplished lawyer than with men of far greater titles."

The affair was in this state when Coke became a widower. He immediately cast a longing eye on the widow's great possessions; but probably he would not have been roused to the indecorous and seemingly hopeless attempt of asking her in marriage, had it not been from the apprehension that, if Francis Bacon should succeed, a political and professional rival would be heartily taken up by the whole family of the Cecils, and that he himself, thus left without support, would probably soon be sacrificed. He resolved to declare himself her suitor, in spite of all objections and difficulties.

Aug. 4. Soon afterwards died the great Lord Treasurer Burleigh; and Coke, attending the funeral, opened his scheme to her father, and her uncle Sir Robert. They, looking to his great wealth and high position, and always afraid of the in-

* When Ben Jonson's "Masque of Beauty" was played before the King at Theobald's and at Whitehall, in 1607, she was one of the fifteen court beauties who, with the Queen, performed in the show. — Nichol's Progresses, vol. ii. p. 174, 175.

fluence which Bacon might acquire in the House of Commons, said they would not oppose it. CHAP. VII.

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We are left entirely in the dark as to the means he employed to win the consent of the lady. He certainly could not have gained, and never did gain, her affections; and the probability is that she succumbed to the importunities of her relations.

Still she resolutely refused to be paraded in the face of the church as the bride of the old wrinkled Attorney General, who was bordering on fifty—an age that appeared to her to approach that of Methuselah; and she would only consent to a clandestine marriage by a priest in a private house, in the presence of two or three witnesses. But here a great difficulty presented itself, for Archbishop Whitgift had just thundered from Lambeth an anathema against irregular marriages. In a pastoral letter addressed to all the bishops of his province, after reciting "that many complaints had reached him of ministers, who neither regarded her Majesty's pleasure nor were careful of their credit, marrying couples in private houses, at unreasonable hours, and without proclamation of banns, as if ordinances were to be contemned, and ministers were to be left at large to break all good order," his Grace expressly prohibited all such offences and scandals for the future, and forbad, under the severest penalties, the celebration of any marriage except during canonical hours, in some cathedral or parish church, with the license of the ordinary, or after proclamation of banns on three Sundays or holidays.*

It was an awkward thing for the first law officer of the Crown, celebrated for his juridical knowledge, and always professing a profound reverence for ecclesiastical authority, to set at defiance the spiritual head of the Church, and to run the risk of the "greater excommunication," whereby he would not only be debarred from the sacraments and from all intercourse with the faithful, but would forfeit his property, and be liable to perpetual imprisonment. However, he determined to run all risks rather than lose the prize within his reach; and on the 24th of November, 1598, in the

He breaks a canon of the Church.

* Strype's Life of Whitgift, p. 522.

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evening, in a private house, without license or banns, was he married to the Lady Hatton, in the presence of her father, who gave her away.

A.D. 1598. He is prosecuted in the Ecclesiastical Court.

Coke probably hoped that this transgression would be overlooked; for Whitgift had been his tutor at college, and, on his being made Attorney General, had kindly sent him a Greek Testament, with a message "that he had studied the common law long enough, and that he should thereafter study the law of God." But this pious primate now showed that he was no respecter of persons, for he immediately ordered a suit to be instituted in his court against Coke, the bride, the Lord Burleigh, and Henry Bathwell the rector of Okeover, the priest who had performed the ceremony. A libel was exhibited against them, concluding for the "greater excommunication" as the appropriate punishment.

Mr. Attorney made a most humble submission; and, in consequence, there was passed a dispensation under the archiepiscopal seal, which is registered in the archives of Lambeth Palace, absolving all the defendants from the penalties which they had incurred, and alleging their "ignorance of the ecclesiastical law" as an excuse for their misconduct, and for the mercy extended to them.

His quarrels with his second wife.

However, the union turned out as might have been foreseen,—a most unhappy one. There was not only a sad disparity of years, but an utter discrepancy of tastes and of manners between the husband and wife. He was a mere lawyer, devoted to his briefs, and hating all gaiety and expense. She delighted above all things in hawking, in balls, and in masques: though strictly virtuous, she was fond of admiration, and, instead of conversing with grave judges and apprentices of the law, she liked to be surrounded by young gallants who had served under Sir Philip Sydney and the Earl of Essex, and could repeat the verses of Spenser and Lord Surrey. She would never even take her second husband's name, for in doing so she must have been contented with the homely appellation of "Mrs. Coke," or "*Cook*" as she wrote it,—for it was not till the following reign that he reached the dignity of knighthood.

Within a year after their marriage they had a daughter,

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about whom we shall have much to relate: but after her birth they lived little together, although they had the prudence to appear to the world to be on decent terms till this heiress was marriageable,—when their quarrels disturbed the public peace—were discussed in the Star Chamber—and agitated the Court of James I. as much as any question of foreign war which arose during the whole course of his reign.

Accession of James I.

In the last illness of Queen Elizabeth, Coke did not, like some of her other courtiers, open a communication with her successor; but he always maintained the right of the Scottish line, notwithstanding the will of Henry VIII., which gave a preference to the issue of the Duchess of Suffolk, and he assisted Sir Robert Cecil in the measures taken to secure the succession of the true heir.

A.D. 1603.

Coke prepared the dry lawyer-like proclamation of the new monarch, which was adopted in preference to the rhetorical one offered by Bacon, declaring "that no man's virtue should be left idle, unemployed, or unrewarded." The Attorney General was included in the warrant under the sign manual for continuing in office the ministers of the Crown, and on the 22d of April his patent was renewed under the great seal. He did not show the same impatience as his rival to gain the King's personal notice, and he was not introduced into the royal presence for several weeks. At last, at a grand banquet, given in the palace at Greenwich to the principal persons of the kingdom, James, with many civil speeches, conferred upon him the honour of knighthood, along with Lee the Lord Mayor of London, and Crook the Recorder. To his credit it should be remembered, that he at no time strove to gain the favour of the great,—that he never mixed in court intrigues,—and that he was contented to recommend himself to promotion by what he considered to be the faithful discharge of his official duties.

May 23. Coke is knighted.

Nov. 17. His insulting language to Sir Walter Raleigh.

His first appearance as public prosecutor in the new reign was on the trial, before a special commission at Winchester, of Sir Walter Raleigh, charged with high treason by entering into a plot to put the Lady Arabella Stuart on the throne;

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A. D. 1603.

and here, I am sorry to say that, by his brutal conduct to the accused, he brought permanent disgrace upon himself and upon the English bar. He must have been aware that, notwithstanding the mysterious and suspicious circumstances which surrounded this affair, he had no sufficient case against the prisoner, even by written depositions and according to the loose notions of evidence then subsisting; yet he addressed the jury, in his opening, as if he were scandalously ill-used by any defence being attempted. While he was detailing the charge, which he knew could not be established, of an intention to destroy the King and his children, — at last the object of his calumny interposed, and the following dialogue passed between them: —

Raleigh: "You tell me news I never heard of." *Attorney General:* "Oh, sir, do I? I will prove you the notoriest traitor that ever held up his hand at the bar of any court." *R.:* "Your words cannot condemn me; my innocency is my defence. Prove one of these things wherewith you have charged me, and I will confess the whole indictment, and that I am the horriblest traitor that ever lived, and worthy to be crucified with a thousand thousand torments." *A. G.:* "Nay, I will prove all: thou art a monster: thou hast an English face, but a Spanish heart." *R.:* "Let me answer for myself." *A. G.:* "Thou shalt not." *R.:* "It concerneth my life." *A. G.:* "Oh! do I touch you?"

The proofless narrative having proceeded, Raleigh again broke out with the exclamation, "You tell me *news*, Mr. Attorney!" and thus the altercation was renewed: —

A. G.: "Oh, sir, I am the more large because I know with whom I deal; for we have to deal to day with a *man of wit*. I will teach you before I have done." *R.:* "I will wash my hands of the indictment, and die a true man to the King." *A. G.:* "You are the absolutest traitor that ever was." *R.:* "Your phrases will not prove it." *A. G.* (*in a tone of assumed calmness and tenderness*): "You, my masters of the jury, respect not the wickedness and hatred of the man; respect his cause: if he be guilty, I know you will have care of it, for the preservation of the King, the continuance of the Gospel authorised, and the good of us all." *R.:* "I do not hear yet that you have offered one word of proof against *me*. If my Lord Cobham be a traitor, what is

that to me?" *A. G.:* "All that he did was by thy instigation, thou viper; for I *thou* thee, thou traitor."*

The depositions being read, which did not by any means make out the prisoner's complicity in the plot, he observed, —

"You try me by the Spanish Inquisition if you proceed only by circumstances, without two witnesses." *A. G.:* "This is a treasonable speech." *R.:* "I appeal to God and the King in this point, whether Cobham's accusation is sufficient to condemn me?" *A. G.:* "The King's safety and your clearing cannot agree. I protest before God I never knew a clearer treason. Go to, I will lay thee upon thy back for the confidentest traitor that ever came at a bar."

At last, all present were so much shocked that the Earl of Salisbury, himself one of the Commissioners, rebuked the Attorney General, saying, "Be not so impatient, good Mr. Attorney; give him leave to speak." *A. G.:* "If I may not be patiently heard, you will encourage traitors and discourage us. I am the King's sworn servant, and must speak." The reporter relates that "here Mr. Attorney sat down in a chafe, and would speak no more until the Commissioners urged and entreated him. After much ado he went on, and made a long repetition of all the evidence, thus again addressing Sir Walter: 'Thou art the most vile and execrable traitor that ever lived. I want words sufficient to express thy viprous treasons.'"

Of course there was a verdict of *guilty;* but public feeling was so outraged, that the sentence could not then be carried into execution. He languished many years in prison, and, after his unfortunate expedition to Guiana, the atrocity was perpetrated of ordering him to be hanged, drawn, and quartered on this illegal judgment.

Sir Edward Coke's arrogance to the whole bar, and to all who approached him, now became almost insufferable. His demeanour was particularly offensive to his rival, who,

* Sir Toby, in giving directions to Sir Andrew for his challenge to Viola, is supposed to allude to this scene: —

"If thou *thou'st* him some thrice, it shall not be amiss; and as many lies as will lie in thy sheet of paper. Let there be gall enough in thy ink."— *Twelfth Night*, act iii. sc. 2.

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Logomachy between Coke and Bacon.

although without office, excited his jealousy by the splendid literary fame which he had acquired, and by the great favour which he enjoyed at Court. Bacon, as yet, was only King's counsel, all his intrigues for promotion having proved abortive. He has left us a very graphic account of one of his encounters with the tyrant of Westminster Hall near the close of the preceding reign. Having to make a motion in the Court of Exchequer, which, it seems, he knew would be disagreeable to Coke, he says—

"This I did in as gentle and reasonable terms as might be. Mr. Attorney kindled at it, and said, 'Mr. Bacon, if you have any tooth against me, pluck it out; for it will do you more hurt than all the teeth in your head will do you good.' I answered coldly in these very words, 'Mr. Attorney, I respect you; I fear you not; and the less you speak of your own greatness, the more I will think of it.' He replied, 'I think scorn to stand upon terms of greatness towards you, who are less than little — less than the least,' and other such strange light terms he gave me, with that insulting which cannot be expressed. Herewith stirred, yet I said no more but this, 'Mr. Attorney, do not depress me so far; for I have been your better, and may be again when it please the Queen.' With this he spake, neither I nor himself could tell what, *as if he had been born Attorney General;* and, in the end, bade me 'not meddle with the Queen's business, but with mine own, and that I was unsworn,' &c. I told him, 'sworn or unsworn was all one to an honest man, and that I ever set my service first and myself second, and wished to God that he would do the like.' Then he said 'it were good to clap a *cap. utlagatum* upon my back.' To which I only said 'he could not, and that he was at a fault, for that he hunted on an old scent.'* He gave me a number of disgraceful words besides; which I answered with silence, and showing that I was not moved with them."†

The enmity between them being still further exasperated by subsequent conflicts, Bacon at length wrote the following letter of seeming defiance, but couched in terms which it was thought might soften Sir Edward, or, at any rate, induce him to think it for his advantage to come to a reconciliation: —

* This is supposed to allude to process of outlawry against Bacon at the suit of a usurer.

† Bacon's Works, ed. 1819, vol. vi. p. 46.

"Mr. Attorney,

"I thought it best, once for all, to let you know in plainness what I find of you, and what you shall find of me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion: what it pleaseth you, I pray, think of me: I am one that knows both mine own wants and other men's; and it may be, perchance, that mine mend, and others' stand at a stay. And surely I may not endure in public place to be wronged without repelling the same, to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the Solicitor's place (the rather I think by your means), I cannot expect that you and I shall ever serve as Attorney and Solicitor together; but either to serve with another on your remove, or to step into some other course, so as I am more free than I ever was from any occasion of unworthy conforming myself to you more than general good manners or your particular good usage shall provoke; and if you had not been short-sighted in your own fortune (as I think), you might have had more use of me. But that side is passed. I write not this to show my friends what a brave letter I have written to Mr. Attorney. I have none of those humours; but that I have written it to a good end, that is, to the more decent carriage of my master's service, and to our particular better understanding one of another. This letter, if it should be answered by you in deed and not in word, I suppose it will not be worse for us both, else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being to yourself, I for my part rest," &c.*

Bacon's letter of remonstrance to Coke.

But Coke was inflexible, and, as long as he remained at the bar — encouraging only men who might be useful, without being formidable, to him — would bear "no brother near his throne."

The breaking out of the Gunpowder treason enhanced, if possible, his importance and his superciliousness. The unravelling of the plot was entirely intrusted to him. He personally examined, many times, Guy Fawkes and the other prisoners apprehended when the plot was discovered, but it is believed that they were not in general subjected to the rack, as they did not deny their design to blow into the air

Nov. 5. 1605. Coke conducts the prosecution of Guy Fawkes.

* Bacon's Works, iv. 570.

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the King and all his court, with all the members of both houses of parliament.*

Jan. 27. 1606.

When the trial came on, Coke opened the case to the jury at enormous length, dividing his discourse after the manner of the age: "The considerations concerning the powder treason," said he, "are in number eight: that is to say, 1. The persons by whom; 2. The persons against whom; 3. The time when; 4. The place where; 5. The means; 6. The end; 7. The secret contriving; and, lastly, the admirable discovery thereof." Under the first head, after recapitulating all the plots, real or imaginary, to overturn the Protestant government, which the Roman Catholics were supposed to have entered into since the Reformation, he boasted much of the clemency of Queen Elizabeth, averring that "in all her Majesty's time, by the space of forty-four years and upwards, there were executed in all not thirty priests, nor above five receivers and harbourers of them." Perhaps his style of oratory may best be judged of by the conclusion of his commentary upon the seventh head: —

"S. P. Q. R. was sometimes taken for these words, *Senatus populusque Romanus*, the senate and people of Rome; but now they may truly be expressed thus, *Stultus populus quærit Romam*, a foolish people that runneth to Rome. And here I may aptly narrate the apologue or tale of the cat and the mice. The cat having a long time preyed upon the mice, the poor creatures at last, for their safety, contained themselves within their holes; but the cat, finding his prey to cease, as being known to the mice that he was indeed their enemy and a cat, deviseth this course following, viz. changeth his hue, getting on a religious habit, shaveth his crown, walks gravely by their holes, and yet perceiving that the mice kept their holes, and looking out suspected the worst, he formally and father-like said unto them, '*Quod fueram non sum, frater, caput aspice tonsum!* Oh, brother! I am not as you take

* Guy, however, was made to "kiss the Duke of Exeter's daughter," for he long refused to say more than that "his object was to destroy the parliament as the sole means of putting an end to religious persecution." A Scottish nobleman having asked him "for what end he had collected so many barrels of gunpowder," he replied, "To blow the Scottish beggars back to their native mountains!!!" Two fac-similes of his signature are to be seen in Jardine's Criminal Trials: the first in a good bold hand, before torture; the second after torture, exhibiting the word "Guido" in an almost illegible scrawl, and two ill-formed strokes in place of his surname, — apparently having been unable to hold the pen any longer. — Jardine's Crim. Tr., p. 17.

me for, no more a cat; see my habit and shaven crown!' Hereupon some of the more credulous and bold among them were again, by this deceit, snatched up; and therefore, when afterwards he came as before to entice them forth, they would come out no more, but answered, '*Cor tibi restat idem, vix tibi præsto fidem.* Talk what you can, we will never believe you; you have still a cat's heart within you. You do not watch and *pray*, but you watch to *prey*.' And so have the jesuits, yea, and priests too; for they are all joined in the tails like Samson's foxes. Ephraim against Manasses, and Manasses against Ephraim; and both against Judah."

When Coke came to the last head, he showed the extent to which courtly flattery was in that age profanely carried. On the receipt of the mysterious letter to Lord Monteagle, saying, "thoughe theare be not the apparence of ani stir, yet i saye they shall receyve a terribel blowe this parleament, and yet they shall not seie who hurts them," the Council before whom it was laid, without consulting the King, immediately suspected the true nature of the plot, and took measures to guard against it. The Earl of Salisbury, in his circular giving the first account of it, said, "We conceived that it could not by any other way be like to be attempted than with powder, while the King was sitting in that assembly: of which the Lord Chamberlain conceived more probability because there was a great vault under the said chamber. We all thought fit to forbear to impart it to the King until some three or four days before the session."* Yet Coke now undertook to show "how the King was divinely illuminated by Almighty God, the only ruler of princes, like an angel of God, to direct and point out as it were to the very place—to cause a search to be made there, out of those dark words of the letter concerning a *terrible blow*."

The prisoners were undoubtedly all guilty, and there was abundant evidence against them; but we must deplore the manner in which Coke indulged in his habit of insulting his victims. When Sir Everard Digby, interrupting him, said "that he did not justify the fact, but confessed that he deserved the vilest death and the most severe punishment that

* Winwood, ii. 171.

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might be, but that he was an humble petitioner for mercy and some moderation of justice," Coke replied, with a cold-blooded cruelty which casts an eternal stain upon his memory, "that he must not look to the King to be honoured in the manner of his death, having so far abandoned all religion and humanity in his action; but that he was rather to admire the great moderation and mercy of the King in that, for so exorbitant a crime, no new torture answerable thereto was devised to be inflicted on him. And for his wife and children: whereas he said that for the Catholic cause he was content to neglect the ruin of himself, his wife, his estate, and all, he should have his desire, as it is in the Psalms: Let his wife be a widow, and his children vagabonds; let his posterity be destroyed, and in the next generation let his name be quite put out."

I am glad for the honour of humanity to add, from the report, "Upon the rising of the court, Sir Everard Digby, bowing himself towards the Lords, said, 'If I may but hear any of your Lordships say you forgive me, I shall go more cheerfully to the gallows.' Whereunto the Lords said, 'God forgive you, and we do.'"*

Trial of Garnet the Jesuit. March 28. 1606.

There was still greater interest excited by the case of Garnet, the Superior of the Jesuits, who was suspected of having devised the plot — who had certainly concealed it when he knew it — but against whom there was hardly any legal evidence. His trial came on at the Guildhall of the city of London, King James being present, with all the most eminent men of the time. Coke tried to outdo his exertions against the conspirators who had taken an active part in preparing the grand explosion. When he had detailed many things which took place in the reign of Elizabeth, he turned away from the jury and addressed the King, showing how his Majesty was entitled to the crown of England as the true heir of Edward the Confessor as well as of William the Conqueror, and how he was descended from the sovereign who had united the white and the red roses. "But," exclaimed the orator, "a more famous union is, by the goodness of the Almighty, perfected in his Majesty's person of

* 2 St. Tr. 159—195.

divers lions — two famous, ancient, and renowned kingdoms, not only without blood or any opposition, but with such an universal acclamation and applause of all sorts and degrees, as it were with one voice, as never was seen or read of. And therefore, most excellent King, — for to him I will now speak, —

> "Cum triplici fulvum conjunge leone leonem,
> Ut varias atavus junxerat ante rosas:
> Majus opus varios sine pugnâ unire leones,
> Sanguine quam varias consociasse rosas."

He again asserted that a miracle had been worked to save and to direct the King: "God put it into his Majesty's heart to prorogue the parliament; and, further, to open and enlighten his understanding out of a mystical and dark letter, like an angel of God, to point to the cellar and command that it be searched; so that it was discovered thus miraculously but even a few hours before the design should have been executed." Thus he described the prisoner: "He was a *corrector* of the common law print with Mr. Tottle the printer, and now he is to be *corrected* by the law. He hath many gifts and endowments of nature — by art learned — a good linguist — and by profession a Jesuit and a Superior. Indeed, he is *superior* to all his predecessors in devilish treason — a doctor of Jesuits; that is, a doctor of six *D*'s, — as *D*issimulation, *D*eposing of princes, *D*isposing of kingdoms, *D*aunting and *D*eterring of subjects, and *D*estruction." Then he wittily and tastefully concluded: "*Qui cum Jesuitis, non itis cum Jesuitis,* for they encourage themselves in mischief, and commune among themselves secretly how they may lay snares, and say that no man shall see them. But God shall suddenly shoot at them with a swift arrow, that they shall be wounded; insomuch that whoso seeth it shall say 'this hath God done,' for they shall perceive that it is his work."*

The prisoner was found *guilty;* but, giving credit to all the depositions and confessions, they did not prove upon him a higher offence than *misprision of treason,* in not revealing what had been communicated to him in confession: and ex-

* 2 St. Tr. 217—358.

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ecution was delayed for two months, till, after much equivocation, he was induced by various contrivances to admit that the plot had been mentioned to him on other occasions, although he averred to the last that, instead of consenting to it, he had attempted to dissuade Fawkes and the other conspirators from persisting in it.

This was the last prosecution in which Coke appeared before the public as Attorney General. He had filled the office above twelve years—the most discreditable portion of his career. While a law officer of the Crown, he showed a readiness to obtain convictions for any offences, and against any individuals, at the pleasure of his employers; and he became hardened against all the dictates of justice, of pity, of remorse, and of decency. He gave the highest satisfaction first to Burleigh, and then to his son and successor, Robert Cecil, become Earl of Salisbury, and all legal dignities which fell were within his reach; but, fond of riches rather than of ease, he not only despised puisneships, but he readily consented to Anderson and Gawdy being successively appointed to the office of Chief Justice of the Common Pleas, at that time the most lucrative, and considered the most desirable, in Westminster Hall next to that of Lord Chancellor. The Attorney General was supposed to hold by as secure a tenure as a Judge; and his fees, particularly from the Court of Wards and Liveries, were enormous*, so that he was often unwilling to be "forked up to the bench," which, with a sad defalcation of income, offered him little increase of dignity; for, till the elevation of Jeffreys in the reign of James II., no common law judge had been made a peer.

Coke made Chief Justice of the Common Pleas. June 30. 1606.†

But, at last, Coke felt fatigued, if not satiated, with amassing money at the bar, and, on the death of Gawdy, he resigned his office of Attorney General and became Chief Justice of the Court of Common Pleas. As a preliminary, he took upon himself the degree of Serjeant-at-law; and he gave rings with the motto, "Lex est tutissima cassis."

* The salary of Attorney General was only 81*l.* 6*s.* 8*d.*, but his official emoluments amounted to 7000*l.* a year. Coke's private practice, besides, must have been very profitable to him.

† Dug. Or. Jur. p. 102.

Mr. Coventry, afterwards Lord Keeper, whom he had much patronised, acted as his PONY.*

"He was sworn in Chancery as Serjeant," says Judge Croke, the reporter, "and afterwards went presently into the Treasury of the Common Bench, and there by Popham, Chief Justice, his party robes were put on, and he forthwith, the same day, was brought to the bar as Serjeant, and presently after, his writ read and count pleaded, he was created Chief Justice, and sat the same day, and afterwards rose and put off his party robes and put on his robes as a Judge, and the second day after he went to Westminster, with all the Society of the Inner Temple attending upon him." †

The ceremony of riding from Serjeants' Inn to Westminster in the party-coloured robes of a Serjeant was dispensed with in his case by special favour; but when Sir Henry Yelverton, on his promotion soon after, requested the like privilege, "the Judges resolved that the precedent of Sir Edward Coke ought not to be followed." ‡

* I have been favoured, by a learned and witty friend of mine, with the following "Note on the Serjeant's *Pony*.—When the utter barrister is advanced 'ad gradum servientis ad legem,' he gives, as the reporters of all the courts never omit to record, a ring with a motto; a posy, sometimes more or less applicable to the donor or to the occasion,—sometimes to neither. These rings are presented to persons high in station (that for the sovereign is received by the hands of the Lord Chancellor), and to all the dignitaries of the law, by a barrister whom the serjeant selects for that honourable service, and who is called his 'Pony.' Why? Simply because the offering he brings is the *honorarium*, compounding, or composition, which is paid by the learned graduate upon his degree of serjeant-at-law. IGNORAMUS (act ii. scene 7.) enters with money in a bag. *Ignor.* 'Hic est *legem pone*. Hic sunt sexcentæ coronæ pro meo caro corde Rosabelia.' Upon which passage says the learned commentator Hawkins: 'Legem pone. This appears to have been a cant term for ready money.' Dr. Heylin, in his 'Voyage of France,' p. 292., speaking of the university of Orleans, 'In the bestowing of their degrees here they are very liberal, and deny no man that is able to pay his fees. *Legem ponere* is with them more powerful than legem dicere; and he that hath but his gold ready, shall have a sooner despatch than the best scholar upon the ticket.' In the translation of Rabelais by Ozell, c. xii. book 4., the phrase 'En payant' is rendered 'the Legem Pone.' 'They were all at our service for the Legem Pone.' And finally, Tusser, in his Good Husbandly Lessons worthy to be followed by such as will thrive, prefixed to his Four Hundred Points of Good Husbandry, recommends punctuality in payment of debts by the following distich:

'Use *Legem Pone* to pay at thy day,
But use not "Oremus" for often delay.'

In the language, therefore, of a serjeant's posy, 'Ex æquo et bono,' I should say that, regard being had to the valuable consideration of which he is the bearer, his *pony*'s derivation savours more of the *bonus* than the *equus*."

† Cro. Jac. 125.

‡ Ibid. vol. iii. introd. p. 7.

CHAPTER VIII.

CONTINUATION OF THE LIFE OF SIR EDWARD COKE TILL HE WAS DISMISSED FROM THE OFFICE OF CHIEF JUSTICE OF THE COURT OF KING'S BENCH.

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A.D. 1606. His meritorious conduct as a Judge.

COKE, while Attorney General, was liable to the severest censure: he unscrupulously stretched the prerogative of the Crown, showing himself for the time utterly regardless of public liberty; he perverted the criminal law to the oppression of many individuals; and the arrogance of his demeanour to all mankind is unparalleled. But he made a noble amends. The whole of his subsequent career is entitled to the highest admiration. Although holding his judicial office at the pleasure of a King and of ministers disposed to render Courts of Justice the instruments of their tyranny and caprice, he conducted himself with as much lofty independence as any who have ornamented the bench since the time when a judge can only be removed from his office for misconduct, on the joint address of the two Houses of Parliament. Not only was his purity unsuspected in an age when the prevalence of corruption is supposed by some to palliate the repeated instances of bribe-taking proved upon Bacon, but he presented the rare spectacle of a magistrate contemning the threats of power, — without ever being seduced by the love of popular applause to pronounce decisions which could not be supported by precedent and principle. His manners even became much more bland; he listened with patience to tedious arguments; he was courteous when it was necessary to interpose, and, in passing sentence on those who were convicted, he showed more tenderness for them than he had been accustomed to do for those whom he prosecuted while they were still presumed to be innocent.

A.D. 1606 —1613.

He remained Chief Justice of the Common Pleas above seven years; and, considering his profound learning and unwearied diligence, we may, without disparagement to any

of his successors, affirm that the duties of the office have never since been performed so satisfactorily.

A.D. 1606—1613. Part taken by him in the case of the POSTNATI.

The only case in which he was supposed by any one to have improperly attended to the wishes of the Government was that of the POSTNATI. He concurred with the majority in holding that all persons born in Scotland after the accession of James I. to the throne of England were entitled to the privileges of native-born English subjects. Wilson, in allusion to it, denounces Coke as "metal fit for any stamp royal."* I think, myself, that the decision was erroneous; the only plausible analogy to support it—that persons born in Normandy and Aquitaine were not considered aliens—being explained away by the consideration that those provinces had been reconquered from France, and were considered as held of the crown of England. But our Chief Justice was not much acquainted with international law, and he was satisfied with the doctrine of "remitter" as laid down by Littleton, —applying it to the case of Edward III. and Henry V. recovering the French provinces which had belonged by right or birth to William the Conqueror and Henry II., and which were therefore to be considered, when again annexed to England, as taken by *descent*, and not by *conquest*,—or, as he called it, by *purchase*. His opinion, unconsciously to himself, may have been influenced by the efforts he had made while Attorney General to please the King in bringing about a union with Scotland; but the warm praise which he bestows upon the decision, in reporting it, should remove all doubt as to his sincerity on this occasion, and the inflexibility which led to his downfal should relieve his memory from the scandal of seeking royal favour after being sworn to administer the law as a Judge.

He opposes the Court of High Commission.

A plan was now going forward systematically to carry into effect the notion which James entertained, that he was entitled to rule in England as an absolute sovereign. One of the engines chiefly relied upon for success was the Court of HIGH COMMISSION. This had been established, at the accession of Queen Elizabeth†, for cases purely of an ecclesiastical

* Life and Reign of King James, p. 41.

† Stat. 1. Eliz. c. 1.

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nature, and had been so used during the whole of her reign; but, as it was governed by no fixed rules, and as it decided without appeal, an attempt was now made to subject all persons, lay and spiritual, to its jurisdiction, and to give it cognizance of temporal rights and offences. The Court having proceeded hitherto only by *citation*, a new attempt was made to send a pursuivant at once into the house of any person complained against, to arrest him, and to imprison him. This matter being discussed in the Court of Common Pleas, Lord Chief Justice Coke, supported by his brethren, determined that the High Commission had no such power; that the practice was contrary to MAGNA CHARTA; and that, if the pursuivant should be killed in the attempt, the party resisting him would not be guilty of murder.* The authority of the Court of Common Pleas to check the usurpations of the High Commission by granting prohibitions was contested, but Coke successfully supported it, and in various instances fearlessly stopped proceedings before this tribunal which the King was known to favour.†

A.D. 1611.

At last the ingenious device was resorted to of including Coke himself among the Judges of the High Commission, in the hope that he would then no longer oppose it. But he resolutely refused to sit as a member of the Court; whereupon "the Lord Treasurer said that the principal feather was plucked from the High Commissioners. ‡ This Court, however, when Coke was removed from the bench, renewed and extended its usurpations, and made itself so odious to the whole nation, that it was entirely swept away by one of the first acts of the Long Parliament.§

He resists the claim of the King to sit and try causes.

The High Commission being silenced for a time, Archbishop Bancroft suggested the notable expedient of "the King judging whatever cause he pleased in his own person, free from all risk of prohibition or appeal." Accordingly, on a Sunday, the King summoned all the Judges before him and

* 12 Rep. 49.

† Langdale's case, 12 Rep. 50. 58.; Sir William Chancey's case, ib. 82.

‡ 12 Rep. 88.

§ An illegal attempt to revive it by James II. was one of the causes of the Revolution.

his Council, at Whitehall, to know what they could say against this proposal. The Archbishop thus began: — CHAP. VIII.

A.D. 1612.

"The Judges are but the delegates of your Majesty, and administer the law in your name. What may be done by the agent may be done by the principal; therefore your Majesty may take what causes you may be pleased to determine from the determination of the Judges, and determine them yourself. This is clear in divinity; such authority, doubtless, belongs to the King by the Word of God in the Scriptures."

Coke, C. J. (*all the other Judges assenting*): "By the law of England, the King in his own person cannot adjudge any case, either criminal, as treason, felony, &c., or betwixt party and party concerning his inheritance or goods; but these matters ought to be determined in some court of justice. The form of giving judgment is *ideo consideratum est per curiam;* so the Court gives the judgment. Richard III. and Henry VII. sat in the Star Chamber, but this was to consult with the justices upon certain questions proposed to them, and not *in judicio.* So in the King's Bench he may sit, but the Court gives the judgment. *Ergo,* the King cannot take any cause out of any of his courts, and give judgment upon it himself. No king since the Conquest has assumed to himself to give any judgment in any cause whatsoever which concerned the administration of justice within this realm. So the King cannot arrest any man, as laid down in the Year Book 1 H. VII. 7. 4., '*for the party cannot have remedy against the King.*' So if the King give any judgment, what remedy can the party have? * We greatly marvelled that the most reverend prelate durst assert that such absolute power and authority belongs to the King by the Word of God, which requires that the laws even in heathen countries be obeyed. Now it is provided by Magna Charta, and other statutes duly passed and assented to by the Crown, 'Quod tam majores quam minores justitiam habeant et recipiant in CURIA Domini Regis.' By 43 Ed. III. c. 3. no man shall be put to answer without presentment before the justices, or by due process according to the ancient law of the land; and any thing done to the contrary shall be void. From a roll of parliament in the Tower of London, 17 Richard II., it appears that a controversy of land between the parties having been heard by the King, and sentence having been given, it was reversed for this, — that the matter belonged to the common law."

* So Markham, C. J., told Edward IV. that "the King cannot arrest a man for suspicion of treason or felony, as others his lieges may."

CHAP. VIII.

A.D. 1612.

King James: "My Lords, I always thought, and by my saul I have often heard the boast, that your English law was founded upon reason. If that be so, why have not I and others reason as well as you the Judges?"

Coke, C. J.: "True it is, please your Majesty, that God has endowed your Majesty with excellent science as well as great gifts of nature; but your Majesty will allow me to say, with all reverence, that you are not learned in the laws of this your realm of England, and I crave leave to remind your Majesty that causes which concern the life or inheritance, or goods or fortunes, of your subjects are not to be decided by natural reason, but by the artificial reason and judgment of law, which law is an art which requires long study and experience before that a man can attain to the cognizance of it. The law is the golden met-wand and measure to try the causes of your Majesty's subjects, and it is by the law that your Majesty is protected in safety and peace."

King James (in a great rage): "Then I am to be *under* the law — which it is treason to affirm."

Coke, C. J.: "Thus wrote Bracton, 'Rex non debet esse sub homine, sed sub DEO ET LEGE.'"*

This conference made a great sensation on the public mind. We have this account of it in a contemporary letter: —

"On Sunday, before the King's going to Newmarket, * * * my Lord Coke and all the Judges of the common law were before his Majesty, to answer some complaints of the civil lawyers for the general granting of prohibitions. I heard that the Lord Coke, amongst other offensive speech, should say to his Majesty that his Highness was defended by his laws; at which saying, and with other speech then used by the Lord Coke, his Majesty was very much offended, and told him that he spake foolishly, and said that he was not defended by his laws, but by God; and so gave the Lord Coke, in other words, a very sharp reprehension both for that and other things, and withal told him that Sir Thomas Compton, the Judge of the Admiralty Court, was as good a Judge."†

James is said, nevertheless, to have tried his hand as a Judge, but to have been so much perplexed when he had heard both sides, that he abandoned the trade in despair, saying, "I could get on very well hearing one side only, but

* 12 Coke, 63.

† Lodge's Illustrations, iii. 564.

when both sides have been heard, by my saul I know not which is right." The terror of Coke, however, was the true reason for abandoning the scheme, for, — if it had not thus been boldly denounced as illegal, — by the aid of sycophants it would have proceeded, and much injustice would have been perpetrated.

He checks the arbitrary proceedings of other courts.

Coke likewise, for a time, gave a serious check to arbitrary proceedings in the Courts of the Lord President of Wales and of the Lord President of the North. Having been summoned, with his brother Judges, before the King and the Council, on a complaint of the prohibitions he had granted against these proceedings, he justified fully all that he had done, and thus concluded: "We do hope that whereas the Judges of this realm have been more often called before your Lordships than in former times they have been (which is much observed, and gives much emboldening to the vulgar), after this day we shall not be so often upon such complaints hereafter called before you."* On this occasion he had a lucky escape, for, he says, "the King was well satisfied with these reasons and causes of our proceedings, who, of his grace, gave me his royal hand, and I departed from thence in his favour."†

He denies the power of the Crown to alter the law by "proclamation."

But Coke incurred the deepest displeasure of his Majesty by declaring against a *pretension* — called a "prerogative" — which might soon entirely have superseded parliament. It had been usual for the Crown, from ancient times, to issue proclamations to enforce the law; and sometimes they had introduced new regulations of police, which, being of small importance, and for the public benefit, were readily acquiesced in. James, from his accession, began to issue proclamations whenever he thought that the existing law required amendment. At last, on the 7th of July, 1610, the Commons, roused by these extraordinary attempts to supersede their functions, presented an address to the Crown, in which they say —

"It is apparent both that proclamations have been of late years much more frequent than before, and that they are extended not only to the liberty, but also to the goods, inheritances, and live-

* 12 Coke, 50. † 13 Co. 33.

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lihood of men; some of them tending to alter points of the law, and make them new; other some made shortly after a session of parliament, for matter directly rejected in the same session; others appointing punishments to be inflicted before lawful trial and conviction; some containing penalties in form of penal statutes; some referring the punishment of offenders to courts of arbitrary discretion, which have laid heavy and grievous censures upon the delinquents; some, as the proclamation for starch, accompanied with letters commanding inquiry to be made against transgressors at the quarter-sessions; and some vouching former proclamations, to countenance and warrant the latter."

On Bacon, now Solicitor General, and in high favour at Court, was imposed the delicate task of presenting this address, which he tried to soften by saying—

"We are persuaded that the attribute which was given by one of the wisest writers to two of the best emperors, 'divus Nerva and divus Trajanus,' so saith Tacitus, 'res olim insociabiles miscuerunt, imperium et libertatem,' may be truly applied to your Majesty. For never was there such a conservator of regality in a crown, nor ever such a protector of lawful freedom in a subject. Let not the sound of grievances, excellent Sovereign, though it be sad, seem harsh to your princely ears. It is but *gemitus columbæ*, the mourning of a dove, with that patience and humility of heart which appertaineth to loving and loyal subjects."

James, however, thinking that this complaint resembled more the *roaring of a lion*, was much alarmed; and, really believing, from the flatterers who surrounded him, that he possessed rightfully the power which he assumed, he ordered all the Judges to be summoned and consulted "whether it did not by law belong to him." Coke says—

"I did humbly desire that I might have conference with my brethren the Judges about the answer to the King. To which the Lord Chancellor said that every precedent had at first a commencement, and that he would advise the Judges to maintain the power and prerogative of the King, and in cases in which there is no authority or precedent to leave it to the King to order in it according to his wisdom, and for the good of his subjects, or otherwise the King would be no more than the Duke of Venice."* *Coke, C. J.:* "True it is that every precedent hath a commencement; but where authority and precedent is wanting, there is need of great consideration before that any thing of novelty shall

be established, and to provide that this be not against the law of the land; for the King cannot, without parliament, change any part of the common law, nor create any offence by his proclamation which was not an offence before. But I only desire to have a time of consideration and conference; for *deliberandum est diu quod statuendum est semel.*"

After much solicitation, time was at last given, and the consulted Judges all concurred in an answer drawn by Coke—

"That the King by his proclamation cannot create any offence which was not an offence before, for then he may alter the law of the land by his proclamation in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment. Also the law of England is divided into three parts: common law, statute law, and custom; but the King's proclamation is none of them. Also, *malum, aut est malum in se, aut prohibitum;* that which is against common law is *malum in se; malum prohibitum* is such an offence as is prohibited by act of parliament. Also it was resolved, that the King hath no prerogative but that which the law of the land allows him. But the King, for prevention of offences, may admonish his subjects by proclamation that they keep the laws, and do not offend them, upon punishment to be inflicted by the law."*

Coke, in reporting these resolutions of the Judges, adds on his own authority, "The King, by his proclamation or otherwise, cannot change any part of the common law, or statute law, or the customs of the realm. Also, the King cannot create any offence, by his prohibition or proclamation, which was not an offence before, for that were to change the law, and to make an offence which was not; for *ubi non est lex, ibi non est transgressio;* ergo, that which cannot be punished without proclamation cannot be punished with it."† Yet Hume, in commenting on the issuing of proclamations by James I., has the audacity to say, "The legality of this exertion was established by uniform and undisputed practice, and was even acknowledged by lawyers, who made, however, this difference between laws and proclamations, that the authority of the former was perpetual, that of the latter expired with the sovereign who emitted them."‡

* 12 Rep. 74. † 12 Coke, 75.

‡ Vol. vi. p. 52. We ought not hastily to accuse him of wilful misrepresentation

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Oct. 25. 1613. Coke against his will is made Chief Justice of the King's Bench.

Coke met with a very sensible mortification, in being promoted to be Chief Justice of the King's Bench, on the death of Chief Justice Fleming. This office, although of higher rank, was then considered less desirable than the chiefship of the Common Pleas, for the profits of the former were much less, with increased peril of giving offence to the Government, and so being dismissed. Coke's seeming promotion was owing to the spite and craft of his rival. Bacon was impatient for the Attorney General's place, filled by Hobart, who was not willing to change it for the chiefship of the King's Bench, but would for that of the Common Pleas. Bacon thereupon sent to the King "reasons why it should be exceedingly much for his Majesty's service to remove the Lord Coke from the place he now holdeth, to be Chief Justice of England, and the Attorney to succeed him, and the Solicitor the Attorney." Among the reasons urged for this arrangement were these: —

"First, it will strengthen the King's causes greatly among the Judges, for both my Lord Coke will think himself near a privy councillor's place, and thereupon turn obsequious, and the Attorney General, a new man and a grave person in a Judge's place, will come in well to the other, and hold him hard to it, not without emulation between them who shall please the King best. Besides the removal of my Lord Coke to a place of less profit, though it be with his will, yet will it be thought abroad a kind of discipline to him for opposing himself in the King's causes, the example whereof will contain others in more awe."

The King consented; Coke was obliged to agree to the translation, under a hint that he might be turned off entirely; and Bacon, now Attorney General, in his Apophthegms thus exults in his own roguery: "After a few days the Lord Coke, meeting with the King's Attorney, said to him, 'Mr. Attorney, this is all your doing; it is you that have made this

or suppression, for he was utterly unacquainted with *English juridical writers*. Gibbon entered on a laborious study of the Roman civil law, to fit him to write his DECLINE AND FALL; but Hume never had the slightest insight into our jurisprudence, and his work, however admirable as a literary composition, is a very defective performance as a history. Of the supposed distinction between a *statute* and a *proclamation*, — that the former was of perpetual obligation till repealed, and that the latter lost its force on a demise of the crown, — I do not find a trace in any of our books.

stir!' Mr. Attorney answered, 'Ah, my Lord, your Lordship all this while hath grown in breadth, you must needs now grow in height, or else you would be a monster.'"

There cannot be a doubt that Coke's elevation was meant as a punishment, and that Bacon, the contriver of it, already contemplated his ruin; but, to save appearances, he was treated with outward respect, and in a few days afterwards he was sworn of the Privy Council.

He took his seat in the Court of King's Bench in Michælmas Term, 1613, and presided there three years with distinguished ability and integrity. He reconciled himself to the loss of profit by the high rank he now enjoyed, and he took particular delight in styling himself "Chief Justice of England," a title which his predecessors had sometimes assumed, although, since the office of Grand Justiciar had ceased to exist, they had usually been only called "Chief Justice of the Court of King's Bench."

He gives a qualified support to "Benevolences."

Hopes were entertained that he really was becoming "obsequious." A "BENEVOLENCE" being demanded to supply the pressing necessities of the Crown, he munificently gave 2000*l.* as his own contribution, while very small sums could be squeezed out of his brother Judges;—the legality of the Benevolence being questioned in the Star Chamber, after some hesitation he pronounced an opinion that it was not illegal. Mr. Attorney General Bacon thereupon wrote to the King,—"My Lord Chief Justice delivered the law for the Benevolence strongly; I would he had done it timely." But the ground he took was, that "a Benevolence was a free-will offering — not a tax;" and Bacon added, "It will appear most evidently what care was taken that that which was then done might not have the effect, no, nor the show, no, nor so much as the shadow of a tax."* Coke thus proved that he would not play a factious part for the sake of popularity, and that he was disposed to support the proceedings of the Government as far as his conscience would permit.

But Bacon, the Attorney General — now in possession of the King's ear — with a view to strengthen his favour at

* 2 St. Tr. 904.; 12 Rep. 119.

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A.D. 1615. His laudable conduct in Peacham's Case.

Court, and to insure his acquisition of the Great Seal, about which he cared more than the completion of his NOVUM ORGANUM, originated proceedings contrary to the plainest dictates of law, justice, and humanity. One of the worst of these was the prosecution for high treason of Peacham, an aged and pious clergyman, against whom the only case was, that upon breaking into his house, and searching his papers, there was found a MS. sermon — which he had never preached — inculcating the doctrine, that, under certain circumstances, subjects may resist a sovereign who attempts to subvert their liberties. In the vain hope of making him accuse himself, he was placed upon the rack in the presence of the law officers of the Crown, and "examined before torture, in torture, between torture, and after torture." * To obtain a conviction seemed hopeless without a previous opinion obtained irregularly from the Judges. Thus Mr. Attorney reported progress to King James, as to his endeavours: —

"For Peacham's case I have, since my last letter, been with Lord Coke twice; once before Mr. Secretary's going down to your Majesty, and once since, which was yesterday; at the former of which times I delivered him Peacham's papers, and at this latter the precedents, which I had with care gathered and selected. . . . He fell upon the same allegation which he had begun at the council table, 'that judges were not to give opinions by fractions, but entirely according to the vote, whereupon they should settle upon conference, and that this *auricular taking of opinions*, single and apart, was new and dangerous;' and other words more vehement than I repeat."

At this interview, Coke finally refused to give any opinion, and desired the precedents to be left with him. Soon after, Bacon again wrote to the King, "Myself yesterday took the Lord Coke aside, after the rest were gone, and told him all the rest were ready, and I was now to require his Lordship's opinion, according to my commission. He said I should have it, and repeated that twice or thrice, and said he would tell it me within a very short time, though he were not at that instant ready." In three days Bacon wrote finally to the King,

* Letter to the King, signed by Bacon.

— "I send your Majesty enclosed my Lord Coke's *answers;* I will not call them *rescripts,* much less *oracles.* They are of his own hand. I thought it my duty, as soon as I received them, instantly to send them to your Majesty, and forbear for the present to speak farther of them."

Peacham was nevertheless brought to trial, and found guilty of treason; but such indignation was excited by this judicial outrage, that the sentence of the law was not carried into execution, and a lingering death was inflicted upon him in prison by disease. No part of the national disgrace could be cast upon the upright and resolute Chief Justice of the King's Bench.*

He exerts himself to bring to justice the murderers of Sir Thomas Overbury.

He likewise escaped all censure in the affair of the murder of Sir Thomas Overbury. He had not been accessory to the infamous sentence by which, to please the caprice of the King, the young Countess of Essex, after carrying on an illicit intercourse with a paramour, obtained a divorce from her husband on the pretext that she still remained a virgin.† At her second marriage to the Earl of Somerset, he made her a wedding present; but, in thus assisting to give *éclat* to the ceremony, he followed the example of all courtiers, and of the Lord Mayor and citizens of London. Two years after, when the rumour broke out that before this ill-starred union she and her new husband had instigated the murder of the man who had tried to prevent it, he put forth all his energy to get at truth; although the King, from personal liking or some mysterious reason, wished to screen the most guilty parties from punishment.

In former times, the Chief Justice and the Puisne Judges of the Court of King's Bench often acted as police magistrates, taking preliminary examinations, and issuing warrants for the apprehension of criminals. In this case Coke took not less than 300 examinations, writing down the words of the witnesses and of the parties accused with his own hand. "The Lord Chief Justice's name thus occuring," observed Bacon, "I cannot pass by it, and yet I have not skill to flatter. But this I will say of him, that never man's person and his place

* See 5 Bacon's Works, 353.; Cro. Car. 125.
† 2 St. Tr. 786.

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A.D. 1616.

were better met in business than my Lord Coke and my Lord Chief Justice in the case of Overbury."

Nevertheless, we should consider some of his proceedings very strange if they were imitated by a Chief Justice of the present age. Having granted the warrant, he actually went to Royston, where the Earl of Somerset was with the King, that he might himself superintend the arrest. Along with the other judges who were to preside at the trial, he marshalled the evidence, and concerted in what order it should be laid before the jury.* When charging the grand jury, he told them that "of all felonies, murder is the most horrible; of all murders, poisoning is the most detestable; and of all poisonings, the lingering poison,"—adding that "poisoning was a popish trick." When Mrs. Turner, one of the subordinate agents, was on her trial, he said "she had the seven deadly sins; for she was a whore, a bawd, a sorcerer, a witch, a papist, a felon, and a murderer." Sir John Hollis and others having, at the execution of Weston, who had been employed to administer the poison, made some observations on the manner in which his trial had been conducted by Lord Chief Justice Coke, — the same Chief Justice Coke, sitting in the Star Chamber, passed sentence upon them, ordering that, besides being subjected to fine and imprisonment, they should make an humble apology to himself at the bar of the Court of King's Bench. He then blurted out this witty parody, —

"Et quæ tanta fuit *Tyburn* tibi causa videndi?"

adding that "he himself never had attended executions after reading the lines in Ovid —

"Et lupus et vulpes instant morientibus,
Et quæcunque minor nobilitate fera est."

At the arraignment of the Countess of Somerset, although

* There is extant a very curious letter of Mr. Attorney General Bacon to the King, about getting up the case: —"If your Majesty vouchsafe to direct it yourself, that is the best; if not, I humbly pray you to require my Lord Chancellor that he, together with my Lord Chief Justice, will confer with myself and my fellows that shall be used for the marshalling and bounding of the evidence, that we may have the help of his opinion as well as that of my Lord Chief Justice; whose great travels as I much commend, yet that same plerophoria or over-confidence doth always subject things to a great deal of chance."—22d of January, 1615-16.

she pleaded *guilty*, and Coke attended only as assessor to the Lord High Steward's Court, he said that "the persons engaged by her to commit the murder had before their death confessed the fact, and died penitent; and that he had besought their confessor to prove this, if need should require." *

But these things were quite according to the established rules of proceeding, and in no respect detracted from the credit which the Chief Justice acquired by the vigour and ability with which he had secured the conviction of the noble culprits; — and he was not suspected of being accessory to their pardon, — granted in consideration of their discreet silence on topics which the King was very desirous of keeping from public view.†

Bacon afraid that Coke would be made Lord Chancellor.

Sir Edward Coke's high reputation now raised a general belief that he would succeed Lord Ellesmere as Chancellor. This threw Bacon into a state of alarm, and he wrote a letter to the King, strongly urging his own claims to the great seal, and disparaging his rival: —

"If you like my Lord Coke," said he, "this will follow, — first, your Majesty shall put an overruling nature into an overruling place, which may breed an extreme; next, you shall blunt his industries in matter of your finances, which seemeth to aim at another place ‡; and, lastly, popular men are no sure mounters for your Majesty's saddle." §

The effect of this artful representation was much heightened by Coke's continued display of independence; for although he would, no doubt, have been well pleased to be promoted to the office of Chancellor, he would not resort to the compliances and low arts by which Bacon was successfully struggling to secure the prize.

* In the course of one of these trials, the Chief Justice was placed in a very ridiculous situation. Those who were plotting against the life of Sir Thomas Overbury had superstitiously consulted one *Forman*, a conjuror, respecting their own fate; and this impostor had kept in a book a list of all those who had come to him to have their fortunes told. "I well remember," says Sir Anthony Welden, "there was much mirth made in the court upon the showing this book; for it was reported the first leaf my Lord Coke lighted on he found his own wife's name." — *Court and Character of King James*, p. 111.

† 2 St. Tr. 911—1034.; Amos's Oyer of Poisoning.

‡ This refers to the office of Lord Treasurer, which was afterwards conferred on Chief Justices.

§ Bacon's Works, v. 371.

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A.D. 1616. Coke's dispute with Lord Ellesmere about injunctions.

On the contrary, from a sense of duty he spontaneously involved himself in a controversy which made him very obnoxious to the Government. A love of power, or of popularity, very easily deludes a judge into the conviction that he is acting merely with a view to the public good and under the sanction of his oath of office, when he is seeking unwarrantably to extend the jurisdiction of his court. Lord Chancellor Ellesmere having very properly granted an injunction against suing out execution on a judgment obtained in the King's Bench by a gross fraud, Lord Chief Justice Coke, asserting that this was a subversion of the common law of England, and contrary to an act of parliament, induced the party against whom the injunction was granted to prepare an indictment against the opposite party, his counsel, his solicitor and the Master in Chancery who had assisted the Chancellor when the injunction was granted. He then took infinite pains in seeking out and marshalling the evidence by which the prosecution was to be supported. The grand jury, however, threw out the indictment; and the matter being brought before the King, he decided with a high hand in favour of the Court of Chancery.*

Bacon, rejoicing to see that he could now have no rival for the great seal, wrote to the King, with seeming magnanimity, "My opinion is plainly that my Lord Coke at this time is not to be disgraced." Nevertheless he inveighed against his rival for "the affront offered to the well-deserving person of the Chancellor when thought to be dying,—which was barbarous."

Coke incurs the King's high displeasure in the case of *Commendams*.

The deadly offence at last given to the King was by the proceedings in the "case of Commendams,"† in which Coke's conduct was not only independent and energetic, but in strict conformity to the law and constitution of the country, and every way most meritorious. A question arising as to the power of the King to grant ecclesiastical preferments to be held along with a bishopric, a learned counsel, in arguing at the bar, denied this power, and answered the reason given for

* See Lives of the Chancellors, vol. ii. ch. l.

† *Colt* v. *Bishop of Lichfield*, Hobart, 193.

it—"that a bishop should be enabled to keep hospitality"—by observing that "no man is obliged to keep hospitality beyond his means," and by a sarcastic comparison between the riches of modern prelates and the holy apostles, who maintained themselves by catching fish and making tents. The Bishop of Winchester, who happened to be present at a trial in which his order was so deeply concerned, was highly incensed by these liberties, and, hurrying off to the King, represented to him that the Judges had quietly allowed an attack to be made on an important prerogative of the Crown, which ought to be held sacred. Bacon, the Attorney General, being consulted, he mentioned a power which, according to many precedents, the King possessed, of prohibiting the hearing of any cause in which his prerogative was concerned, *Rege inconsulto*, —*i. e.* until he should intimate his pleasure on the matter to the Judges; and it was resolved that in this case such a prohibition should issue. Accordingly Bacon, in the King's name, wrote a letter to Sir E. Coke and the other Judges, saying — April 25.

"For that his Majesty holdeth it necessary, touching his cause of *commendams*, upon the report which my Lord of Winchester, who was present at the last argument, made to his Majesty, that his Majesty be first consulted with ere there be any farther argument, therefore it is his Majesty's express pleasure that the day appointed for farther argument of the said cause be put off till his Majesty's farther pleasure be known upon consulting him."

Although the royal prerogative had been incidentally brought into question, the action was to decide a mere civil right between the litigating parties; and the illegality of this interference was so palpable, that Coke had no difficulty in inducing his brethren to disregard it, and to proceed in due course to hear and determine the cause.

Judgment being given, Coke penned, and he and all the other Judges signed, a bold though respectful letter to their "most dreaded and gracious Sovereign," in which, after some preliminary statements, they say—

"We are and ever will be, with all faithful and true hearts, according to our bounden duties, ready to serve and obey your Majesty,

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A.D. 1616.

and think ourselves most happy to spend our times and abilities to do your Majesty true and faithful service. What information hath been made out unto you, whereon your Attorney doth ground his letter from the report of the Bishop of Winchester, we know not; this we know, that the true substance of the cause summarily is this, that it consisteth principally upon the construction of two acts of parliament: the one, 25 Ed. III., and the other, 25 Hen. VIII.; whereof your Majesty's Judges, upon their oaths and according to their best knowledge and learning, are bound to deliver their true understanding faithfully and uprightly; and the case, being between two for private interest and inheritance, earnestly called for justice and expedition. We hold it therefore our duty to inform your Majesty that our oath is in these express words, 'that in case any letter come to us contrary to law, we do nothing therefore but certify your Majesty thereof, and go forth to do the law notwithstanding the same.'

"We have advisedly considered of the said letter of Mr. Attorney, and with one consent do hold the same to be contrary to law, and such as we could not yield to by our oaths. And knowing your Majesty's zeal to justice to be most renowned, therefore we have, according to our oaths and duties, at the very day prefixed the last term, proceeded according to law; and we shall ever pray to the Almighty for your Majesty in all honour, health, and happiness long to reign over us."

June 6.

The King, in a fury, summoned the Judges to appear before him at Whitehall, and, when they had entered his presence, declared that —

"He approved of their letter neither in its matter nor manner of expression. He condemned them for their remissness in suffering counsellors at the bar to deal in impertinent discussions about his prerogative, and told them they ought to have checked such sallies, nor suffered such insolence. With regard to their own business, he thought fit to acquaint them that deferring a hearing upon necessary reasons neither denied nor delayed justice; it was rather a pause of necessary prudence, the Judges being bound to consult the King when the crown is concerned. As to the assertion that it was a point of private contest between subject and subject, this was wide of the truth, for the Bishop who was the defendant pleaded for a commendam only in virtue of the royal prerogative. 'Finally,' said he, 'let me tell you that you have been in a hurry where neither party required expedi-

tion, and you ought to have known that your letter is both couched indecently and fails in the form thereof.'"

Upon this, all the twelve threw themselves on their knees and prayed for pardon. But, although Coke expressed deep sorrow for having failed in form, he still manfully contended that—

"Obedience to his Majesty's command to stay proceedings would have been a delay of justice, contrary to law, and contrary to the oaths of the Judges; moreover, as the matter had been managed, the prerogative was not concerned." *King:* "For judges of the law to pronounce whether my prerogative is concerned or not is very preposterous management, and I require you my Lord Chancellor to declare whether I that am King, or the Judges, best understand my prerogative, the law, and the oath of a Judge." *Lord Chancellor Ellesmere:* "With all humility, your Majesty will best be advised in this matter by your Majesty's counsel learned in the law now standing before you." *Bacon, A. G.:* "Your Majesty's view of the question none can truly gainsay, and, with all submission, I would ask the reverend Judges, who so avouch their oaths, whether this refusal of theirs to make a stay, that your Majesty might be consulted, was not nearer to a breach of their oaths? They are sworn to counsel the King; and not to give him counsel until the business is over, is in effect not to give him counsel at all when he requires it." *Coke, C. J.:* "Mr. Attorney, methinks you far exceed your authority; for it is the duty of counsel to plead before the Judges, and not against them." *Bacon, A.G.:* "I must be bold to tell the *Lord Chief Justice of England,* as he styles himself, that we, the King's counsel, are obliged by our oaths and by our offices to plead not only against the greatest subjects, but against any body of subjects, be they courts, judges, or even the Commons assembled in parliament, who seek to encroach on the prerogative royal. By making this challenge, the Judges here assembled have highly outraged their character. Will your Majesty be pleased to ask the Lord Coke what he has to say for himself now, and graciously to decide between us?" *King:* "My Attorney General is right, and I should like to know what further can be said in defence of such conduct." *Coke, C. J.:* "It would not become me further to argue with your Majesty." *Lord Ellesmere, C.:* "The law has been well laid down by your Majesty's Attorney General, and I hope that no Judge will now refuse to obey your Majesty's mandate issued under the like circumstances."

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In the belief that Coke was humbled, as effectually well as the other Judges, the following question was put to them: "In a case where the King believes his prerogative or interest concerned, and requires the Judges to attend him for their advice, ought they not to stay proceedings till his Majesty has consulted them?" *All the Judges except Coke:* "Yes! yes!! yes!!!" *Coke, C. J.:* "WHEN THE CASE HAPPENS, I SHALL DO THAT WHICH SHALL BE FIT FOR A JUDGE TO DO."

This simple and sublime answer abashed the Attorney General, made the recreant Judges ashamed of their servility, and even commanded the respect of the King himself, who dismissed them all with a command to keep the limits of their several courts, and not to suffer his prerogative to be wounded,—concluding with these words, which convey his notion of the free constitution of England: "for I well know the true and ancient common law to be the most favourable to Kings of any law of the world, to which law I do advise you my Judges to apply your studies."*

He stops a job of the Duke of Buckingham.

In spite of the offence thus given to the King, the Chief Justice might have been allowed long to retain his office if he would have sanctioned a job of Villiers, the new favourite, who, since the fall of the Earl of Somerset, had been centralising all power and patronage in his own hands. The chief clerkship in the Court of King's Bench, a sinecure then worth 4000*l.* a year, in the gift of the Chief Justice, was about to become vacant by the resignation of Sir John Roper, created Lord Teynham. It had been promised to the Earl of Somerset, and the object was to secure it for his successor, although there was now a plan to apply the profits of it to make up the very inadequate salaries of the Judges.† Bacon undertook, by fair or foul means, to bend the resolution of Coke, and, after a casual conversation with him, thus wrote to Villiers, pretending to have fully succeeded:—

* Bacon's Works, ii. 517.; Carte, iv. 35.; Lives of Chancellors, ii. 249.

† In the reign of James I., the salary of the Chief Justice of the King's Bench was only 224*l.* 19*s.* 6*d.* a year, with 33*l.* 6*s.* 8*d.* for his circuits; and the salary of the puisne judges was only 188*l.* 6*s.* 8*d.* a year. But this was a great increase

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"As I was sitting by my Lord Chief Justice, one of the Judges asked him whether Roper were dead. He said that for his part he knew not. Another of the Judges answered, 'It should concern you, my Lord, to know it.' Wherefore he turned his speech to me, and said, 'No, Mr. Attorney, I will not wrestle now in my latter times.' 'My Lord,' said I, 'you speak like a wise man.' 'Well,' said he, 'they have had no luck with it that have had it.' I said again 'those days be passed.' Here you have the dialogue to make you merry; but in sadness I was glad to perceive he meant not to contest."

However, when the resignation took place, Coke denied the promise, and insisted upon his right to dispose of the office for the benefit of the Judges. This was a display of spirit by no means to be forgiven, and the resolution was immediately formed to cashier him.

June 26. Coke is summoned before the Privy Council: frivolous charges against him.

The true reason for this outrage could not be avowed, and nothing could be more creditable to the integrity and ability of Coke than the wretched inventions which were resorted to as pretexts for disgracing him. Being summoned before the Privy Council, he was first charged with breach of duty when he was Attorney General in concealing a bond given to the Crown by Sir Christopher Hatton. He said that "now twelve years being past, it was no great marvel if his memory was short;" but he showed that he had derived no advantage, and the Crown had suffered no damage, from the alleged neglect. He was then charged with misconduct in his dispute with the Lord Chancellor respecting injunctions. He answered, that if he was in error he might say "Erravimus cum patribus," and he vouched various authorities to prove that such proceedings in the Chancery had been thought to tend to the subversion of the common law. Lastly, he was charged with insulting the King when called before him in the case of *commendams*. He admitted that he was wrong in denying the right of the King's counsel to speak on that occasion, their opinion being asked by his Majesty, but he disclaimed all intentional disrespect in returning the

on the parsimony of former times, for the yearly salary of the Chief Justice of the King's Bench in the reign of Edward I. was only 170 marks.

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answer "that when the time should be, he would do that which should become an honest and a just judge."

A.D. 1616. He is suspended from his office of Chief Justice.

He was then desired to withdraw, and a few days afterwards he was re-summoned before the Privy Council, when, being made to kneel, the Lord Treasurer, the Earl of Suffolk, thus pronounced sentence: —

"Sir Edward Coke, I am commanded by his Majesty to inform you that his Majesty is by no means satisfied with your excuses. Yet, out of regard to your former services, he is not disposed to deal with you heavily, and therefore he hath decreed — 1. That you be sequestered the council chamber until his Majesty's pleasure be farther known. 2. That you forbear to ride your summer circuit as justice of assize. 3. That during the vacation, while you have time to live privately and dispose yourself at home, you take into consideration and review your books of Reports, wherein, as his Majesty is informed, be many extravagant and exorbitant opinions set down and published for positive and good law. Amongst other things, the King is not well pleased with the title of the book wherein you entitle yourself 'LORD CHIEF JUSTICE OF ENGLAND,' whereas by law you can challenge no more than LORD CHIEF JUSTICE OF THE KING'S BENCH. And having corrected what in your discretion be found meet in these Reports, his Majesty's pleasure is that you do bring them privately before himself, so that he may consider thereof as in his princely judgment shall be found expedient. To conclude, I have yet another cause of complaint against you. His Majesty has been credibly informed that you have suffered your coachman to ride bare-headed before you, and his Majesty desires that this may be foreborne in future."

Coke, C. J.: "I humbly submit myself to his Majesty's pleasure; but this I beg your Lordships to take notice of, and to state to his Majesty from me, with all humility, that if my coachman hath rode before me bare-headed, he did it at his own ease, and not by my order."

Alleged errors in his Reports.

The only delinquency which could be pressed against him was having fallen into some mistakes in his printed books of Reports; and to make these the foundation of a criminal proceeding for the purpose of removing him from the bench, must, even in that age, have shocked all mankind. Such was his gigantic energy, that while he was Attorney General he had composed and published five volumes of Reports of Cases

determined while he was at the bar; and afterwards, when he was Chief Justice of the Common Pleas, and of the King's Bench, six more, of cases determined by himself and his brother Judges.* They were executed with great accuracy and ability, though tinctured with quaintness and pedantry; and Bacon, who was now disgracefully taking the most active part against their author, had deliberately written, — "To give every man his due, Sir Edward Coke's Reports, though they may have errors, and some peremptory and extrajudicial resolutions, more than are warranted, yet they contain infinite good decisions and rulings."

The Chief Justice, instead of going the circuit, was condemned to employ himself in revising these Reports; and when Michaelmas Term came round he was again cited before his accusers. Of this meeting we have an account in a letter from Bacon to the King: —

Oct. 3. Proceedings against Coke before the Privy Council.

"This morning, according to your Majesty's commands, we have had my Lord Chief Justice of the Common Pleas before us. It was delivered unto him that your Majesty's pleasure was, that we should receive an account from him of the performance of a commandment of your Majesty laid upon him, which was that he should enter into a view and retraction of such novelties and errors, and offensive conceits, as were dispersed in his Reports; that he had had good time to do it; and we doubted not but he had used good endeavour in it, which we desired now in particular to receive from him. His speech was, that there were of his Reports eleven books, that contained above 500 cases; that heretofore in other Reports much reverenced there had been found errors which the wisdom of time had discovered; and thereupon delivered to us the inclosed paper, wherein your Majesty may perceive that my Lord is an happy man that there should be no more errors in his 500 cases than in a few cases of Plowden. . . .

"The Lord Chancellor, in the conclusion, signified to my Lord Coke your Majesty's commandment, that, until report made and your pleasure therefore known, he shall forbear his sitting at Westminster, &c.; not restraining, nevertheless, any other exercise of his place of Chief Justice in private."

The specific exceptions to the Reports, with his answers,

* He calls them "Parts." Out of respect, they are cited as "1st Report," "2d Report," &c., without any other designation.

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are still extant, to prove the utter frivolity of the proceeding. The only thing that could be laid hold of, with any semblance of reason, was a foolish doctrine alleged to have been laid down extra-judicially in "*Dr. Bonham's Case*," * which I have often heard quoted in parliament against the binding obligation of obnoxious statutes, "that the common law shall control acts of parliament, and sometimes shall adjudge them to be merely void; for where an act of parliament is against common right and reason, the common law shall control it, and adjudge it to be void." He attempted to justify this on former authorities: "In 8 Ed. III., Thomas Tregor's case, Herle saith, 'Some statutes are made against law and right, which they that made them, perceiving, would not put them in execution.'" He concluded with Stroud's case, 16 & 17 Eliz., adjudging "that if an act of parliament give to any to have cognizance of all manner of pleas within his manor of D., he shall hold no plea whereunto himself is a party for *iniquum est aliquem suæ rei esse judicem.*" But this rests on an implied exception; and his other authorities resolve themselves into a question of construction, without countenancing the pretension that judges may repeal an act of parliament, or that the people are to obey only the laws which they approve. † This conundrum of Coke ought to have been laughed at, and not made the pretence for disgracing and ruining him.

Oct. 6.

A few days after, Bacon, in another letter to the King, says, —

"Now your Majesty seeth what he hath done, you can better judge of it than we can. If upon this probation, added to former matters, your Majesty think him not fit for your service, we must, in all humbleness, subscribe to your Majesty, and acknowledge that neither his displacing, considering he holdeth his place but during your will and pleasure, nor the choice of a fit man to be put in his room, are council-table matters, but are to proceed wholly from your Majesty's great wisdom and gracious pleasure. So that in this course it is but the signification of your pleasure, and the business is at an end as to him."

Bacon next prepared a declaration which the King was to

* 8 Rep. f. 118a.

† Bacon's Works, vi. 405.

make to the Privy Council, touching the Lord Coke, "that upon the three grounds of deceit, contempt, and slander of his government, his Majesty might very justly have proceeded not only to have put him from his place of Chief Justice, but to have brought him in question in the Star Chamber, which would have been his utter overthrow; but his Majesty was pleased for that time only to put him off from the council table, and from the public exercise of his place of Chief Justice, and to take farther time to deliberate." Then followed a statement of his turbulent carriage to the King's prerogative, and the settled jurisdiction of the High Commission, the Star Chamber, and the Chancery, with this cutting observation, — "that he having in his nature not one part of those things which are popular in men, being neither civil nor affable, nor magnificent, he hath made himself popular by design only, in pulling down the government." Lastly came the objectionable doctrines to be found in his Reports, "which, after three months' time, he had entirely failed to explain or to justify."*

It is doubtful whether this DECLARATION was ever publicly pronounced by the King, but his Majesty was now fully persuaded to proceed to the last extremity against the offending Judge; and, lest he should relent, Bacon wrote him the following letter:—

"May it please your excellent Majesty, Nov. 13.

"I send your Majesty a form of discharge for my Lord Coke from his place of Chief Justice of your Bench.

"I send also a warrant to the Lord Chancellor for making forth a writ for a new Chief Justice, leaving a blank for the name to be supplied by your Majesty's presence; for I never received your Majesty's express pleasure in it.

"If your Majesty resolve of Montagu, as I conceive and wish, it is very material, as these times are, that your Majesty have some care that the Recorder succeeding be a temperate and discreet man, and assured to your Majesty's service.

"God preserve your Majesty."†

These proceedings seem to have excited considerable interest and sympathy in the public mind. Mr. Chamberlain wrote to Sir Dudley Carlton, —

* Bacon's Works, v. 127.

† Ibid. 131.

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"Lord Coke hath been called twice or thrice this term before the Chancellor and the King's learned counsel, to give a reason for divers things delivered in his Reports. It is not the least of his humiliations to be convented in this point before such judges as Serjeant Crew, Serjeant Montague, and Serjeant Finch, the Attorney General, and the Solicitor, whereof the greater part, except the Solicitor*, are held no great men in law; and, withal, to find such coarse usage as not once to be offered to sit down, and so unrespective and uncivil carriage from the Lord Chancellor's men, that not one of them did move a hat or make any other sign of regard to him; whereof the Queen taking notice, his Majesty has since sent word that he would have him well used."† — A few days after, the same correspondent writes, — "The Lord Coke hangs still in suspense, yet the Queen is said to stand firm for him, and to have been very earnest in his behalf, as likewise the Princes." But on the 14th of November he adds, "The Lord Coke is now quite off the hooks, and order given to send him a *supersedeas* from executing his place. The common speech is that four *P's* have overthrown and put him down; that is, PRIDE, PROHIBITIONS, PRÆMUNIRE, and PREROGATIVE."‡

Coke is dismissed from his office of Chief Justice of the King's Bench.

On the 16th of Nov. the *supersedeas* actually received the royal signature, and passed the great seal, being in these words: —

"For certain causes now moving us, we will that you shall be no longer our Chief Justice to hold pleas before us, and we command you that you no longer interfere in that office, and by virtue of this presence we at once remove and exonerate you from the same."

I wish much that Coke had completed his triumph, by receiving the intelligence with indifference, or at least with composure. But there is extant a letter from Mr. John Castle, written three days after, containing this striking passage: —

Nov. 19.

He sheds tears on his dismissal.

"A thunderbolt has fallen upon my Lord Coke in the King's Bench, which has overthrown him from the roots. The *supersedeas* was carried to him by Sir George Coppin, who, at the presenting of it, saw that magnanimity and supposed greatness of spirit to fall into a very narrow room, for he received it with

* Yelverton.
† Nichol's Progresses of James, vol. iii. p. 194.
‡ Ibid. p. 226.

dejection and tears. *Tremor et successio non cadunt in fortem et constantem virum.*"*

A.D. 1616. He soon rallies and behaves with firmness.

This momentary weakness ought to be forgiven him, for he behaved with unflinching courage while the charges were pending against him; and he knew well that, by yielding the Chief Clerkship to Buckingham, he might easily have escaped further molestation, but "he stood upon a rule made by his own wisdom, — that a judge must not pay a bribe or take a bribe."† We ought likewise to recollect, that although at first he was stunned by the blow, he soon rallied from it, in spite of sore domestic annoyances; and that he afterwards not only took ample revenge on his enemies, but conferred lasting benefits on his country.

The week after Coke's dismissal, Chamberlain wrote to a friend, —

"If Sir Edward Coke could bear his misfortunes constantly it were no disgrace to him, for he goes away with a general applause and good opinion. And the King himself, when he told his resolution at the council table to remove him, yet gave this character, that he thought him no ways corrupt, but a good Justice — with so many other good words, as if he meant to hang him with a silken halter. Hitherto he bears himself well, but especially towards his lady, without any complaint of her demeanour towards him; though her own friends are grieved at it, and her father sent to him to know all the truth, and to show him how much he disallowed her courses, having divided herself from him, and disfurnished his house in Holborn and at Stoke of whatsoever was in them, and carried all the moveables and plate she could come by God knows where, and retiring herself into obscure places both in town and country. He gave a good answer likewise to the new Chief Justice, who sending to him to buy his collar of S.S., he said he would not part with it, but leave it to his posterity, that they might one day know that they had a Chief Justice to their ancestor.' He is now retired to his daughter Sadler's, in Hertfordshire, and from thence it is thought into Norfolk. He hath dealt bountifully with his servants; and such as had places under him, he hath willed them to set down truly what they gained, and he will make it good to them, if they be willing to tarry and continue about him."‡

* See D'Israeli's Character of James I., p. 125.
† Hackett's Life of Lord Keeper Williams, ii. 120.
‡ Nichol's Progresses of James, vol. iii. 228.

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The public were at no loss to discern the true cause of his dismissal when they knew that his successor, before being appointed, was compelled to sign an agreement binding himself to dispose of the Chief Clerkship for the benefit of Buckingham, and when they saw two trustees for Buckingham admitted to the place as soon as the new Chief Justice was sworn in. Bacon now made a boast to the favourite of his good management:—

Nov 29.

"I did cast myself," says he in a letter to Buckingham, "that if your Lordship's deputies had come in by Sir E. Coke, who was tied (that *is*, under an agreement with Somerset), it would have been subject to some clamour from Somerset, and some question what was forfeited — by Somerset's attainder being but a felony — to the King; but now, they coming in from a new Chief Justice, all is without question or scruple."

CHAPTER IX.

CONTINUATION OF THE LIFE OF SIR EDWARD COKE TILL HE WAS SENT PRISONER TO THE TOWER.

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Coke was supposed by mankind and by himself to be disgraced and ruined. Nevertheless his story is more interesting, and he added more to his own fame as well as conferred greater benefits on his country, than if he had quietly continued to go through the routine of his judicial duties till his faculties decayed.

Bacon's vengeance was not yet by any means satiated. Having artfully brought about the fall of his rival, he wrote him a most insulting letter by way of consolation and advice*; he still persecuted him on the absurd charge of attacking the royal prerogative in his Reports; he appointed a commission of the Judges to revise them†; and he meditated an information against him in the Star Chamber for malversation in office, in the hope of a heavy fine being imposed upon him. These spiteful designs seemed now easily within his power, for he had reached the summit of his ambition: the great seal was his own, and he expected the King and Buckingham to continue submissive to his will.

March 7. 1617.

Coke's conduct after his disgrace.

But Coke's energy and integrity triumphed. At the age of sixty-six, from exercise and temperance his health was unimpaired, and his mental faculties seemed to become more elastic. With malicious pleasure he discovered that the new Chancellor was giddy by his elevation; and he sanguinely hoped that, from his reckless and unprincipled proceedings, before long an opportunity would occur of precipitating him from his pride of place into the depth of humiliation.

* Bacon's Works, v. 403.; Lives of the Chancellors, ii. 358.
† Bacon's Works, vi. 409.

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The ex-Chief Justice, a few weeks after his dismissal, contrived to have an interview with the King, and was rather graciously received by him; but he knew that he had no chance of being restored to power except by the favour of Buckingham, whom he had so deeply offended.

His plan to circumvent Bacon by marrying his daughter to Sir John Villiers.

With great dexterity he laid a plan, which had very nearly succeeded, before Lord Chancellor Bacon was warm in the marble chair.

Lady Hatton, although she hated her aged husband, and was constantly keeping him in hot water, occasionally lived with him, and had brought him a daughter, called "The Lady Frances," only fourteen years old, who was a very rich heiress, as her mother's possessions were entailed upon her, and she expected a share of the immense wealth of her father. This little girl was pretty to boot; and she had attracted the notice of Buckingham's elder brother, Sir John Villiers, who was nearly thrice her age, and was exceedingly poor. Sir Edward Coke, while Chief Justice, had scorned the idea of such a match; but it was now suggested to him by Secretary Winwood as the certain and the only means of restoring him to favour at Court.

Soon after Bacon's elevation, the King went to Scotland, attended by Buckingham, to pay a long-promised visit to his countrymen; and the Chancellor, being left behind as the representive of the executive government, played "fantastic tricks" which were not expected from a philosopher in the enjoyment of supreme power. Winwood, the Secretary of State, his colleague, he treated with as little ceremony as he might have done a junior clerk or messenger belonging to the Council Office. There is no such strong bond of union as a common hatred of a third person, and the insulted statesman suggested to the ex-Chief Justice that the favourite might easily be regained by matching the heiress with his brother.

This is the least reputable passage in the whole life of Sir Edward Coke. He thought of nothing but of recovering himself from disgrace, and humbling an enemy: therefore he jumped at the proposal, and, without consulting Lady Hatton, or thinking for a moment of the inclinations of the young lady, he went to Sir John Villiers and offered him his

daughter, with all her fortune and expectations, expressing high satisfaction at the thought of an alliance with so distinguished a family. Sir John, as may be supposed, professed a never-dying attachment to the Lady Frances, and said that, "although he would have been well pleased to have taken her in her smock, he should be glad, by way of curiosity, to know how much could be assured by marriage settlement upon her and her issue?" Sir Edward, with some reluctance, came to particulars, which were declared to be satisfactory, and the match was considered as made.

July. Resentment of Lady Hatton, who carries off and conceals their daughter.

But when the matter was broken to Lady Hatton she was in a frantic rage; not so much because she disapproved of Sir John Villiers for her son-in-law, as that such an important arrangement had been made in the family without her opinion being previously asked upon it. She reproached Sir Edward the more bitterly on account of his ingratitude for her recent services; as, notwithstanding occasional frowardness, she had been kind to him in his troubles.* When the first burst of her resentment had passed over she appeared more calm, but this was from having secretly formed a resolution to carry off her daughter and to marry her to another. The same night, Sir Edward still keeping up his habit of going to bed at nine o'clock,—soon after ten she sallied forth with the Lady Frances from Hatton House, Holborn. They entered a coach which was waiting for them at a little distance, and, travelling by unfrequented and circuitous roads, next morning they arrived at a house of the Earl of Argyle at Oatlands, then rented by Sir Edmund Withipole, their cousin. There they were shut up, in the hope that there could be no trace of the place of their concealment.

While they lay hid, Lady Hatton not only did every thing possible to prejudice her daughter against Sir John Villiers, but offered her in marriage to the young Earl of Oxford, and

* Chamberlain, in a letter dated 22d of June, 1616, says, "The Lady Hatton stood by him in great stead, both in soliciting at the council table, wherein she hath done herself great honour, but especially in refusing to sever her cause from his, as she was moved to do, but resolving and publishing that she would run the same fortune with him." She had even quarrelled with both their Majesties for his sake. On the 6th of July, Chamberlain writes, "His lady hath likewise carried herself very indiscreetly, of late, towards the Queen, whereby she hath lost her favour and is forbidden the Court—as also the King's."

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actually showed her a forged letter, purporting to come from that nobleman, which asseverated that he was deeply attached to her, and that he aspired to her hand.

Coke's march at the head of an armed band of men to rescue his daughter.

Meanwhile Sir Edward Coke, having ascertained the retreat of the fugitives, applied to the Privy Council for a warrant to search for his daughter; and, as there was some difficulty in obtaining it, he resolved to take the law into his own hand. Accordingly the ex-Chief Justice of England mustered a band of armed men, consisting of his sons, his dependants, and his servants; and, himself putting on a breast-plate, with a sword by his side, and pistols at his saddle bow, he marched at their head upon Oatlands. When they arrived there they found the gate leading to the house bolted and barricaded. This they forced open without difficulty; but the outer door of the house was so secured as long to defy all their efforts to gain admission. The ex-Chief Justice repeatedly demanded his child in the King's name, and laid down for law, that "if death should ensue, it would be justifiable homicide in him, but murder in those who opposed him." One of the party, gaining entrance by a window, let in all the rest; but still there were several other doors to be broken open. At last Sir Edward found the objects of his pursuit secreted in a small closet, and, without stopping to parley, lest there should be a rescue, he seized his daughter, tore her from her mother, and, placing her behind her brother, rode off with her to his house at Stoke Pogis in Buckinghamshire. There he secured her in an upper chamber, of which he himself kept the key. He then wrote the following letter to Buckingham: —

He succeeds.

"Right Honourable,

July 15. 1617.

"After my wife, Sir Edmund Withipole and the lady his wife, and their confederates, to prevent this match between Sir John Villiers and my daughter Frances, had conveyed away my dearest daughter out of my house, and in most secret manner to a house near Oatland, which Sir Edmund Withipole had taken for the summer of my Lord Argyle, I, by God's wonderful providence finding where she was, together with my sons and ordinary attendants, did break open two doors, and recovered my daughter, which I did for these causes: — First, and principally, lest his

Majesty should think I was of confederacy with my wife in conveying her away, or charge me with want of government in my household in suffering her to be carried away after I had engaged myself to his Majesty for the furtherance of this match. 2. For that I demanded my child of Sir Edmund and his wife, and they denied to deliver her to me. And yet for this warrant is given to sue me in his Majesty's name in the Star Chamber with all expedition, which though I fear not well to defend, yet it will be a great vexation. But I have full cause to bring all the confederates into the Star Chamber, for conveying away my child out of my house."

He subjoins an enumeration of the vast estates to be settled upon his daughter if she were to be married to Sir John.

But the Lord Chancellor was still determined that the match should be broken off. He strongly encouraged Lady Hatton in her resistance to it; and he wrote letters to Scotland strenuously dissuading it. Thus he addressed Buckingham: —

July 12. Bacon's indiscreet efforts to break off the match.

"It seemeth that Secretary Winwood hath officiously busied himself to make a match between your brother and Sir Edward Coke's daughter, and, as we hear, he does it more to make a faction than out of any great affection for your Lordship. It is true he hath the consent of Sir Edward Coke, as we hear, upon reasonable conditions for your brother, and yet no better than, without question, may be found in some other matches. But the mother's consent is not had, nor the young gentlewoman's, who expects a great fortune from her mother, which, without her consent, is endangered. This match, out of my faith and freedom towards your Lordship, I hold very inconvenient both for your brother and yourself. First, he shall marry into a disgraced house, which in reason of state is never held good. Next, he shall marry into a troubled house of man and wife, which in religion and Christian discretion is disliked. Thirdly, your Lordship will go near to lose all such your friends as are adverse to Sir Edward Coke, myself only excepted, who, out of a pure love and thankfulness, shall ever be firm to you. And, lastly, believe it will greatly distract the King's service. . . . . Therefore my advice is, that the marriage be not pressed or proceeded in without the consent of both parents, and so break it altogether."

He tried to alarm the King by the notion that the general

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disposition then evinced to submit to his Majesty's prerogative would be disturbed by any show of favour to the ex-Chief Justice: —

"All mutinous spirits grow to be a little poor, and to draw in their horns; and not the less for your Majesty's disauthorising the man I speak of. Now, then, I reasonably doubt that, if there be but an opinion of his coming in with the strength of such an alliance, it will give a turn and relapse in men's minds, into the former state of things, hardly to be holpen, to the great weakening of your Majesty's service."

Coke is prosecuted in the Star Chamber for carrying off his daughter.

A communication with Edinburgh, which can now be made in a few minutes, then required many days; and before Bacon had received an answer to these letters he had instructed Yelverton, the Attorney General, to commence a prosecution in the Star Chamber against Sir Edward Coke, for the riot at Oatlands, which was represented as amounting almost to a levying of war against the King in his realm.

Lady Hatton confined and prosecuted for her part in this affair.

On the other hand, Lady Hatton made another attempt forcibly to get possession of her daughter. Thereupon proceedings were instituted against her by Sir Edward Coke, and he actually had her put under restraint upon the following charges: —

"1. For conveying away her daughter *clam et secreté*. 2. For endeavouring to bind her to my Lord Oxford without her father's consent. 3. For counterfeiting a letter of my Lord of Oxford offering her marriage. 4. For plotting to surprise her daughter and take her away by force, to the breach of the King's peace, and for that purpose assembling a body of desperate fellows, whereof the consequences might have been dangerous." She answered — "1. I had cause to provide for her quiet, Secretary Winwood threatening she should be married from me in spite of my teeth, and Sir Edward Coke intending to bestow her against her liking; whereupon, she asking me for help, I placed her at my cousin-german's house a few days for her health and quiet. 2. My daughter tempted by her father's threats and ill usage, and pressing me to find a remedy, I did compassionate her condition, and bethought myself of this contract with my Lord of Oxford, if so she liked, and therefore I gave it her to peruse and consider by herself; she liked it, cheerfully writ it out with her own hand, subscribed it, and returned it to me. 3. The end

justifies — at least excuses — the fact; for it was only to hold up my daughter's mind to her own choice, that she might with the more constancy endure her imprisonment — having this only antidote to resist the poison — no person or speech being admitted to her but such as spoke Sir John Villar's language. 4. Be it that I had some tall fellows assembled to such an end, and that something was intended, who intended this? — the mother! And wherefore? because she was unnaturally and barbarously secluded from her daughter, and her daughter forced against her will, contrary to her vows and liking, to the will of him she disliked."

She then goes on to describe, by way of recrimination, "Sir Edward Coke's most notorious riot, committed at my Lord of Argyle's house, where, without constable or warrant, well weaponed, he took down the doors of the gate-house and of the house itself, and tore the daughter in that barbarous manner from her mother — justifying it for good law; a word for the encouragement of all notorious and rebellious malefactors from him who had been a Chief Justice, and reputed the oracle of the law."

Bacon, in danger of being dismissed from his office of Chancellor, supports the match.

Now Bacon discovered the fatal mistake he had committed in opposing the match, and trembled lest the great seal should at once be transferred from him to Sir Edward Coke. Buckingham wrote to him: —

"In this business of my brother's, that you over-trouble yourself with, I understand from London, by some of my friends, that you have carried yourself with much scorn and neglect both towards myself and my friends, which if it prove true, I blame not you but myself."

And the King's language to him was still more alarming: —

"Whereas you talk of the riot and violence committed by Sir Edward Coke, we wonder you make no mention of the riot and violence of them that stole away his daughter, which was the first ground of all that noise."

August, 1617.

Bacon's only chance of escaping shipwreck was at once to put about and go upon the contrary tack. Accordingly he stopped the prosecution in the Star Chamber against Sir Edward Coke; he directed that Lady Hatton should be kept in strict confinement; he declared himself a warm friend to the match of the Lady Frances with Sir John Villiers; and he contrived, through Lady Compton, the mother of the

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Villierses, to induce Lady Hatton to consent to it. The inclinations of the young lady herself had been as little consulted as if she had been a Queen of Spain about to be married under the auspices of a Louis Philippe counselled by a Guizot*; and as she had before copied and signed the contract with Lord Oxford at the command of her mother, she next copied and signed the following letter to her mother at the command of her father: —

Letter of the Lady Frances Coke to her mother.

"Madam,

"I must now humbly desire your patience in giving me leave to declare myself to you, which is, that without your allowance and liking, all the world shall never make me entangle or tie myself. But now, by my father's especial commandment, I obey him in presenting to you my humble duty in a tedious letter, which is to know your Ladyship's pleasure, not as a thing I desire; but I resolve to be wholly ruled by my father and yourself, knowing your judgments to be such that I may well rely upon, and hoping that conscience and the natural affection parents bear to children will let you do nothing but for my good, and that you may receive comfort, I being a mere child and not understanding the world nor what is good for myself. That which makes me a little give way to it is, that I hope it will be a means to procure a reconciliation between my father and your Ladyship. Also I think it will be a means of the King's favour to my father. Himself is not to be misliked; his fortune is very good, a gentleman well born. . . . . So I humbly take my leave, praying that all things may be to every one's contentment.

"Your Ladyship's most obedient
"and humble daughter for ever,
"FRANCES COKE.

"Dear mother, believe there has no violent means been used to me by words or deeds."

Lady Hatton then wrote to the King that she would settle her lands on her daughter and Sir John Villiers, — but remained as spiteful as ever against her husband. Having

* Written before the revolution of February, 1848. After the misfortunes which have befallen the King and the minister, I would not have harshly censured their conduct in this affair; but those who wished for the tranquillity of Europe must ever regret that the King, in recklessly seeking the supposed advantage of his dynasty, forgot that he was the first magistrate of a free state; and, still more, that the minister, from whom better things might have been expected, prompted and encouraged him to follow his inclination, instead of constitutionally reminding him of his duty. — *April*, 1849.

justified her conduct in always refusing to take his name, she says, — CHAP. IX.

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"And whereas he accuseth me of calling him 'base and treacherous fellow;' the words I cannot deny, but when the cause is known I hope a little passion may be excused. Neither do I think it will be thought fit that, though he have five sons to maintain (as he alledgeth), a wife should therefore be thought unfit to have maintenance according to her birth and fortune."

October. The wedding.

The marriage settlement was drawn under the King's own superintendence, that both father and mother might be compelled to do justice to Sir John Villiers and his bride; and on Michaelmas day the marriage was actually celebrated at Hampton Court Palace, in the presence of the King and Queen and all the chief nobility of England. Strange to say, Lady Hatton still remained in confinement, while Sir Edward Coke, in nine coaches, brought his daughter and his friends to the palace, from his son's at Kingston-Townsend. The banquet was most splendid; a masque was performed in the evening; the stocking was thrown with all due spirit; and the bride and bridegroom, according to long established fashion, received the company at their *couchée*.

Sir Edward Coke, however, by no means derived from this alliance the advantage he had anticipated. He was restored to the Privy Council, but he received no judicial promotion; and he had the mortification to see his rival, Bacon, by base servility, restored to the entire confidence both of the King and the favourite. What probably galled him still more was, that, very soon afterwards, Lady Hatton was set at liberty. Abusing and ridiculing her husband, she became the delight of the whole Court; — insomuch that the King and Queen accepted a grand entertainment from her, at Hatton House, in Holborn, from which her husband was excluded.*

Nov. 2. Lady Hatton restored to liberty and to favour at court.

* "The expectancy of Sir Edward's rising is much abated by reason of his lady's liberty, who was brought in great honour to Exeter House by my Lord of Buckingham, from Sir William Craven's, whither she had been remanded, presented by his Lordship to the King, received gracious usage, reconciled to her daughter by his Majesty, and her house in Holborn enlightened by his presence at dinner, where there was a royal feast; and, to make it more absolutely her own, express commandment given by her Ladyship that neither Sir Edward Coke nor any of his servants should be admitted." — *Strafford's Letters and Despatches*, vol. i. p. 5.

We have not any circumstantial account of the honours conferred on the Lady

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It is sad to relate, that the match — mercenary on the one side, constrained on the other — turned out most inauspiciously. Sir John Villiers was created Viscount Parbeck; but, after much dissension between him and his wife, she eloped from him with Sir Robert Howard, and, after travelling abroad in man's attire, died young, leaving a son, who, on the ground of illegitimacy, was not allowed to inherit the estate and honours of her husband.

A.D. 1621. Coke attends to the judicial business of the Privy Council.

The next four years of Coke's life were passed very ingloriously. Bacon still enjoyed the lustre and the profits of the office of Lord Chancellor, while he himself, regarded with suspicion, was condemned to the obscure and gratuitous labour of the Council table, corresponding pretty nearly to that of our "Judicial Committee."* He likewise sat occasionally in the Star Chamber; and he consented to act in several commissions issued by the Government.† The Lord Chancellor tried to keep him in good humour by warm thanks for his exertions, and by vague promises that he should have the Lord Treasurer's place, or some other great preferment. "If Sir Edward Coke," says he in a letter to Buckingham, "continue sick or keep in, I fear his Majesty's service will languish too in those things which concern the law." ‡ Again, "Sir Edward Coke keeps in still, and we have miss of him." § Afterwards, "Sir Edward Coke was at Friday's hearing, but in his nightcap; and complained to me he was *ambulent* and not *current*. I would be sorry he should fail us in this cause [illegible] therefore I desired his Majesty to signify to him, takin[illegible] knowledge of some light indisposition of his, how much h[illegible] should think his service disadvantaged if he should be at any [illegible]

Hatton on this occasion in her husband's absence; but we are informed that the year before, when the King dined at Wimbledon with her father Lord Ex[illegible]eter, "the Lady Hatton was there, and well graced, for the King kissed her t[illegible]wice." —*Nichol's Progresses of James*, vol. iii. p. 177.

* He was resworn a Privy Councillor, Sept. 1617.

† For the banishment of Jesuits and seminary priests (Rymer's Fœdera, xvii. 93.); for negotiating a treaty between the Dutch and English merchants, touching their trade to the East Indies (ibid. 170.); for inquiring into fines belonging to the Crown in regard of manorial dues (ibid. 224.); and for examining into the prevalent offences of transporting ordnance into foreign parts (ibid. 273.).

‡ Bacon's Works, v. 511.

§ Ibid. vi. 214.

day away."* A reason assigned for the suspension of Council table business was, "Sir Edward Coke comes not yet abroad."†

A.D. 1621—1625. He sits in the Star Chamber.

Sitting in the Star Chamber, he was particularly zealous in supporting a prosecution against certain Dutch merchants charged with the crime of exporting the coin; he voted that they should be fined 150,000*l.* for an offence then considered "enormous, as going to the dispoverishment of the realm."‡ In two other cases, which excited much interest at the time, his severity was supposed to have been sharpened by the recollection of personal injuries. It may be recollected how the Lord Treasurer Suffolk had lectured him for his presumption in making his coachman ride bare-headed before him. The same Lord Treasurer had himself fallen into disgrace, and was now prosecuted in the Star Chamber, along with his lady, for corrupt dealings in a branch of the public revenue. "Sir Edward presiding when sentence was to be pronounced, he led the way in a long and learned speech, shewing how often Treasurers had pillaged the King and the people; and, trying to prove that by the Earl and Countess the King had lost 50,000*l.*, he proposed that they should be fined double that sum, and imprisoned till the fine was paid: on the suggestion of Lord Chief Justice Hobart, it was reduced to 30,000*l.*, for which they were committed to the Tower."§

Coke was most vindictive against Yelverton, the Attorney General, who had filed the information against him in the Star Chamber for the forcible rescue of his daughter. This distinguished lawyer, who had prosecuted so many others, having incurred the displeasure of Buckingham, was himself prosecuted in the Star Chamber, on the pretence that he had inserted some clauses, in a charter to the City of London, for which he had no warrant from the King. Sir Edward Coke, whose place it was to begin, after a long and bitter speech against him, proposed that he should be fined 6000*l.*, be dismissed from his office, and be imprisoned in the

* Bacon's Works, vi. 230. † Ibid. 230. 239.
‡ Stephens's Introduction to Bacon's Letters, p. 46.
§ Wilson's Life of King James I., p. 706.

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Tower during the King's pleasure. Upon the intercession of other members of the Court, the fine was moderated to 4000*l.*, and the rest of the sentence was entirely submitted to his Majesty.*

Coke a Lord Commissioner of the Treasury.

The Lord Treasurer's office being put into commission, Coke was for some time a Lord of the Treasury along with Archbishop Abbott†, and he seemed to be coming into greater favour,—as if the King had been about to act upon the suggestion that he might be useful in the repair of the revenue. Bacon gave the following astute advice,—"As I think it were good his hopes were at an end in some kind, so I could wish they were raised in some other."‡

A new parliament to be called.

Accordingly, his opinion was asked about the propriety of calling a new parliament, after parliaments had been disused for six whole years.§ We are told that he was in most of the confidential conferences of state on the management of the elections‖, although he could scarcely have been consulted when the proclamation was settled in which the King warned his faithful subjects not to return to the House of Commons "bankrupts nor necessitous persons, who may desire long parliaments for their private protection; *nor yet curious and wrangling lawyers, who may seek reputation by stirring needless questions.*"†

Coke is returned for Liskeard.

Coke himself was elected for the borough of Liskeard, in Cornwall; and there seemed a prospect of his cordially co-operating with the Government. He might have thought that this course would not be inconsistent with his independence or his patriotism, for the Lord Chancellor had declared that the elections were to be carried on "without packing, or degenerating arts, but rather according to true policy."¶

There was, however, too much reciprocal jealousy rankling in the minds of the rivals to render it possible that they should ever cordially act together, although terms of decent courtesy had for some time been established between them.

Coke's envy was now much excited by the immense glory

* Stephens's Introduction, p. 17. Coke escaped the disgrace of the execution of Sir Walter Raleigh, and probably could have made no effort to save him.

† Devon's Pell Records, temp. Jac. I.

‡ Bacon's Works, v. 381. § Ibid. 531. ‖ Ibid. 586.

† 1 Parl. Hist. 1169. ¶ Bacon's Works, v. 531.

which Bacon acquired by the publication of the NOVUM ORGANUM. Having received a copy from the author, he wrote in the fly-leaf, "Edw. C. ex dono Auctoris," and he vented his spleen in the following sarcastic lines, which he subjoined: —

A.D. 1620. His treatment of the presentation copy of Bacon's Novum Organum.

"*Auctori Consilium.*

Instaurare paras veterum documenta sophorum,
Instaura leges, justitiamque prius."

In the titlepage, which bore the device of a ship passing under a press of sail through the pillars of Hercules, he marked his contempt of all philosophical speculations by adding a distich in English:

"It deserves not to be read in schooles,
But to be freighted in the *Ship of Fools*."*

Just as parliament was about to assemble, a vacancy occurred in the high offices to which Coke aspired, and he might have been appeased. But Bacon was so much intoxicated by his political ascendency and his literary fame, that he thought he might now safely despise the power of his rival, and slight him with impunity. Accordingly, Montagu, Coke's successor as Chief Justice of the King's Bench, was promoted to be Lord Treasurer, and raised to the peerage; and the Chief Justiceship of the King's Bench, instead of being restored to him who had held it with such lustre, was conferred upon an obscure lawyer called Sir James Ley.† The ex-Chief Justice was highly exasperated, and he resolved to devote himself to revenge. He cared little for the office of High Steward of the University of Cambridge, which had lately been conferred upon him; and *patriotism* was his only resource.

Dec. 14. 1620.

Jan. 29. 1621.

Coke disappointed in not being made Lord Treasurer.

It should be related of him, however, that, although he had no taste for polite literature or philosophy, he did not waste his leisure in idleness, but took delight in juridical studies. After his dismission from the office of Chief Justice, he prepared the 12th and 13th Parts of his Reports, which, as they contained a good deal against the High Commission Court, and against the King's power to issue proclamations altering the law of the land, were not published in his lifetime. He then began his great work — called his "First

He completes his "Reports, and proceeds with his Commentary on Littleton.

* Alluding to Sebastian Brand's famous "SHIP OF FOLYS."—This presentation copy of the Novum Organum is still preserved at Holkham.

† Orig. Jur. 104.

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Institute"—the Commentary on Littleton,—which may be considered the "Body of the Common Law of England." This was the solace of his existence—for he still lived separate from his wife—and, amidst the distractions of politics, no day passed over him without his indulging in an exercitation to illustrate **Villenage, Continual Claim, Collateral Warranty,** or some other such delightful subject.

Parliament meets.

The meeting of parliament, on the 30th of January, 1621, may be considered the commencement of that great movement which, exactly twenty-eight years afterwards, led to the decapitation of an English sovereign under a judicial sentence pronounced by his subjects. The Puritans had been gradually gaining strength, and were returned in considerable numbers to the new House of Commons. Sir Edward Coke, who had hitherto professed high-Church principles, placed himself at their head, and, in struggling for the redress of grievances, he was supported by men of all parties except the immediate retainers of the Court. The irregular modes resorted to for the purpose of raising money, particularly by the grant of monopolies, in violation of the engagements contracted by the Crown at the conclusion of the reign of Queen Elizabeth, had filled the whole nation with discontent.

Feb. 16. Coke prompts and conducts the proceedings which led to the downfall of Bacon.

Sir Edward Coke, to establish his popularity, began his operations by moving an address to the King "for the better execution of the laws against Jesuits, Seminary Priests, and Popish Recusants," which was carried almost unanimously. The Upper House having concurred in the address, it was read to James by Lord Bacon. This was the last time of his officiating as Chancellor in the royal presence.

His destruction was at hand, and all the proceedings against him were conducted or prompted by his revengeful rival. A motion being made by Mr. Secretary Calvert for a supply, Sir Edward Coke moved, as an amendment, "That supply and grievances should be referred together to a committee of the whole House." We have the following abstract of his speech:—

"'*Virtus silere in convivio, vitium in consilio.*' I joy that all are bent with alacrity against the enemies of God and us,—Jesuits, Seminaries, and Popish Catholics. The indulgence shown

to them was a grievance complained of in the 8th year of this reign. I and Popham were thirty days in examination of the Gunpowder Plot at the Tower. The root of it was out of the countries belonging to the Pope, and Vaux repented him that by delay he had failed. God then, and in 1588, delivered us for religion's sake. Let us guard our privileges, for the privileges of the House regard the whole kingdom; like a circle, which ends where it began. Take heed that we lose not our liberties by petitioning for liberty to treat of grievances. In Edward III.'s time, to treat of grievances a parliament was held yearly. There has been no parliament now for near seven years, and proclamations are substituted for statutes. But no proclamation is of force to alter the law; and, where they are at variance, the law is to be obeyed and not the proclamation.* No doubt a due supply ought to be granted. The King's ordinary charge and expences are much about one; the extraordinary are ever borne by the subject; the King shall be no beggar. If all the corn be brought to the right mill, I will venture my whole estate that the King's will defray his ordinary charges. But let us consider grievances, and supply one with another. The remedying of grievances will encourage the House, and enable us to increase the supply."

The amendment was carried without a division, and it was resolved to go upon *grievances* and *supply* that afternoon. Coke was chosen chairman of the committee, and immediately began with Sir Giles Mompesson and the monopolists.†

His rebuke to a member of the House of Commons who scoffed at the observance of the Sabbath day.

He gained much applause, a few days after, from his treatment of a flippant and irreverent speech against a Bill "for the better keeping of the Sabbath," made by a young member of the name of Sheppard, who said —

"Every one knoweth that *Dies Sabbati* is Saturday, so that you would forbid dancing on Saturday; but to forbid dancing on Sunday is in the face of the King's 'Book of Sports;' and King David says, 'Let us praise God in a dance.' This being a point of divinity, let us leave it to divines; and since King David and King James both bid us dance, let us not make a statute against dancing. He that preferred this bill is a disturber of the peace and a Puritan."

Sir Edward Coke: "Whatsoever hindereth the observation of

* Camden says, "Edward Coke bore himself this day with the truest patriotism, and taught that no proclamation was of weight against parliament."—*Camden's Annals of James I.*, p. 67.

† 1 Parl. Hist. 1175—1188.

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the Sabbath is against the Scripture. It is in religion as in other things: if a man goes too much on the right hand, he goes to superstition; if too much on the left, to profaneness and atheism; and take away reverence, you shall never have obedience. If it be permitted thus to speak against such as prefer bills, we should have none preferred."

A motion for Mr. Sheppard's expulsion was then carried, "and, being called to the bar, on his knees he heard his sentence, 'That the House doth remove him from the service of this House as being unworthy to be a member thereof.'"*

He exposes the abuse of monopolies.

The ex-Chief Justice worked diligently in his committee of grievances, and prepared a report exposing the illegal grants of monopolies to Sir Giles Mompesson, to Sir Edward Villiers, the brother of the favourite, and to many others, by which the public had been cruelly defrauded and oppressed. In answer to the argument of the courtiers that these grants were all within the scope of the King's prerogative, he said—

"The King hath indisputable prerogative, as to make war; but there are things indisputably beyond his prerogative, as to grant monopolies. Nothing the less, monopolies are now grown like hydras' heads; they grow up as fast as they are cut off. Monopolies are granted *de vento et sole;* of which we have an example in the patent that in the counties of Devon and Cornwall none shall dry pilchards in the open air save the patentee, of those by him duly authorised. The monopolist who engrosseth to himself what should be free to all men is as bad as the depopulator, who turns all out of doors, and keeps none but a shepherd and his dog; and while they ruin others they never thrive or prosper, but are like the alchymist, with whom *omne vertitur in fumum.*" †

The report was agreed to, and Sir Edward Coke was directed to go to the bar of the Upper House to communicate a copy of it to their Lordships, and to ask a conference in which they might be called upon to concur in it.

March 3. 1621.

A very striking scene was exhibited when Bacon came from the woolsack to the bar of the House of Lords to receive the messengers, for he knew that another committee of the Commons was sitting to investigate charges of judicial corruption against himself, and he did not know but that they

* 1 Parl. Hist. 1194. † Ibid. 1195.

might now be come to impeach him, and to pray that he might be committed to the Tower. He was greatly relieved when the true purport of the message was disclosed, and he gladly announced that the conference was agreed to.* A.D. 1621.

Charges against Bacon for taking bribes.

But the respite was short. The other committee was going on most vigorously and effectively with the investigation of the Lord Chancellor's delinquency. Coke, out of decency, declined being the chairman of it; but he guided all its proceedings, and the task of drawing up the charges arising out of the bribes received from Aubrey and Egerton was confided to him along with Sir Dudley Digges, Sir Robert Phillips, and Mr. Noy, afterwards the author of the writ of ship-money,—then a factious demagogue.†

Bacon had very nearly eluded the blow by inducing the King to send a message to the House of Commons, "that if this accusation could be proved, his Majesty would punish the party accused to the full," and that he would grant a commission under the great seal to examine all upon oath that could speak in this business. The Commons were about to return an answer agreeing to this proposal, when Sir Edward Coke begged they would take heed not to hinder the manner of their parliamentary proceeding against a great delinquent. A resolution was then adopted to prosecute the case before the Lords.‡

Coke procures the impeachment of Bacon.

The impeachment being voted, it was intended that Sir Edward Coke, as manager, should conduct it; but he lost this gratification by the plea of *guilty*, and he was obliged to be satisfied with attending the Speaker to the bar of the House of Lords when judgment was to be prayed, and hearing the Chief Justice of the King's Bench, by order of the Lords, pronounce these words, which I fear caused an ungenerous thrill of pleasure in his bosom:—

May 2. 1621.

Sentence against Bacon.

"Francis Lord Viscount St. Albans having confessed the crimes and misdemeanours whereof he was impeached, this House doth adjudge that he pay a fine to the King of 40,000*l.*,—that he be imprisoned in the Tower of London during the King's pleasure,—that he be for ever incapable of any office, place, or employment

* See Lives of the Chancellors, ii. 388.; 1 Parl. Hist. 1199.
† 2 Str. Tr. 1087. ‡ 1 Parl. Hist. 1228.

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in the state or commonwealth,—and that he never sit in parliament, or come within the verge of the Court." *.

A.D 1621.

The part which Coke had hitherto taken in this affair was according to the rules of law and justice, and the eagerness with which he had discharged his duty might be excused by the sense of personal injury under which he smarted; but we must unequivocally condemn the want of heart which he afterwards displayed, in never visiting his fallen foe in the Tower or in Gray's Inn, — in making no attempt to obtain a mitigation of the sentence, — and in never sending him a letter, or even a kind message, to console him. I can find no trace of these two eminent men, who had been so long rivals, having thenceforth ever met or corresponded with one another. Bacon did not again sit in parliament, or appear in public life, but veiled his errors by devoting himself to the pursuits of literature and philosophy; — while Coke, till he carried the PETITION OF RIGHT, was constantly engaged in the political arena.

Coke exasperated by the appointment of Williams as Lord Keeper.

If James I. and Buckingham had acted discreetly, they would have forgiven the ex-Chief Justice's patriotic aberration, and tried to draw him back to them, by now offering him the great seal; but they had put themselves into the hands of a shrewd Welsh parson, whose subserviency they could rely upon, and whom, to the astonishment of the world, they suddenly proclaimed Lord Keeper. Coke was even fiercer against the Court than he had been before Bacon's disgrace.

After the triumph gained by the people in the overthrow of monopolies, and the conviction of the Lord Chancellor for bribery, the King was impatient to get rid of Parliament till the public excitement should subside, — but yet did not wish to give offence either by a sudden dissolution or prorogation; and he intimated his pleasure that the two Houses should adjourn themselves from May till November.

Struggle respecting the King's power to order the two

Sir Edward Coke violently resented this proceeding, and carried a motion for a conference with the Lords, that they might concert measures to prevent it. Having managed the conference, he reported that the Lords had agreed to a joint

* 2 St. Tr. 1037—1119. Bacon, on account of illness, was not present.

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address, praying the King "to give them further time to finish the bills which they were considering." His Majesty, however, returned a sharp answer, saying that "the address was an improper interference with his prerogative, as he alone had the power to call, adjourn, and determine parliaments." * Sir Edward Coke still complained of this proceeding, and, admitting the King's power to prorogue or dissolve parliaments, insisted that *adjournment* ought to be the spontaneous act of each House. Nevertheless, the King sent a commission, requiring that the proposed adjournment should be made. The House of Lords obeyed; but the Commons, on the advice of Sir Edward Coke, refused to allow the commission to be read. Still there was a majority for adjourning, according to the King's pleasure. "Then Sir Edward Coke, with tears in his eyes, standing up, recited the collect for the King and his issue, adding only to it, 'and defend them from their cruel enemies.' After which the House adjourned to the 14th of November." †

A.D. 1621. Houses to adjourn.

It should be mentioned, to the credit of the Chief Justice, that during this session, although he propounded some doctrines on the subject of money which no class of politicians would now approve, he steadily supported free trade in commodities. A bill "to allow the sale of Welsh cloths and cottons in and through the kingdom of England," being opposed on "reasons of state," he said, "Reason of state is often used as a trick to put us out of the right way; for when a man can give no reason for a thing, then he flyeth to a higher strain, and saith *it is a reason of state.* Freedom of trade is the life of trade; and all monopolies and restrictions of trade do overthrow trade." ‡ On the same principles he supported a bill "to enable merchants of the staple to transport woollen cloth to Holland." § And a bill being brought in "to prohibit the importation of corn, for the protection of tillage," he strenuously opposed it, saying, "If we bar the importation of corn when it aboundeth, we shall not have it imported when we lack it. I never yet heard that a bill was ever before preferred in parliament against the importation

Lord Coke a "free trader."

* 1 Parl. Hist. 1265.
† Ibid. 1295.
‡ Proceedings and Debates, i. 308., ii. 155.
§ Ibid. ii. 35.

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of corn, and I love to follow ancient precedents. I think this bill truly speaks Dutch, and is for the benefit of the Low Countrymen." *

A.D. 1621. He defends Archbishop Abbott from the charge of manslaughter.

During the recess he counteracted a selfish plot of the new Lord Keeper for "*depriving*" Archbishop Abbott, who, in hunting in his park, had unfortunately killed a man with a cross-bow. The attempt was to make it "culpable homicide," on the ground that the Archbishop was employed in an unlawful act when the accident happened. But Coke asserted that, "by the laws of this realm, a bishop may rightfully hunt in a park; — hunt he may by this very token, that a bishop, when dying, is to leave his pack of hounds (called *muta canum*) to the King's free will and disposal." †

Coke leader of the Opposition in the House of Commons.

When parliament again met in November, Coke's spleen was aggravated by a long and pedantic lecture to the two Houses, delivered by Lord Keeper Williams, who pretended to hold regularly-bred lawyers in contempt ‡;—and he exerted himself still more strenuously against the Government. The subjects which then agitated the public were the Prince's proposed match with the Infanta of Spain, which was strongly opposed by the popular party, — and the war for the recovery of the Palatinate, which they strongly desired. Sir Edward Coke moved an address to the King on these subjects, saying, —

"*Melius est recurrere quam male currere.* It is true that the father, even amongst private men, should have power to marry his children, but we may petition the King how his prerogatives are to be exercised for the public good. So the voice of Bellona, not the turtle, must be heard. The King must either abandon his daughter, or engage himself in war. The hope of this match doth make the Papists insolent. To cut off their hopes, he ought to marry the Prince to one of his own religion. On such matters the greatest princes have taken the advice of parliament. Edward III. did confer with the Commons about his own marriage; and in the forty-second year of his reign, growing weary of bearing his armour, treating for peace, he acquainted the Commons with the treaty, — whereupon the Commons did beseech him 'that he would take his sword in his hand, for a just war was better than a dis-

* Proceedings and Debates, ii. 87.
† Collier's Eccl. Hist. ii. 722.
‡ 1 Parl. Hist. 1296.

honourable peace.' In a record, 4 Hen. V., we read these words,— 'it shall hold for ever that it shall be lawful for the Commons to talk of the safety of the kingdom, and the grievances and remedies thereof.' The very writ of summons shows that we are called hither to advise for the defence and state of the King and kingdom." *

The address was carried, but drew down an answer strongly reflecting on the mover:—

"We wish you to remember that we are an old and experienced King, needing no such lessons; being in our conscience freest of any King alive from hearing or trusting idle reports, which so many of your House as are nearest us can bear witness unto you, if you would give as good ear unto them as you do to some tribunitial orators among you." †

The King more deeply resented another address from the Commons, which they styled an "Apologetic Petition," and in which they maintained "that they had merely expressed their opinion with all dutifulness respecting the Spanish match and the assistance to be given to the King of Bohemia." He now said to them,—

"This plenopotency of yours invests you in all power upon earth, lacking nothing but the Pope's, to have the keys also of heaven and purgatory. And touching your excuse of not determining any thing concerning the match of our dearest son, but only to tell your opinion; first, we desire to know how you could have presumed to determine in that point, without committing high treason. In our former answer to you, we confess we meant Sir Edward Coke's foolish business. It had well become him, especially being our servant, and one of our council, to have explained himself unto us, which he never did, though he never had access refused to him."

In a letter to the Speaker, the King gave this command,—

The King forbids the House of Commons to discuss matters of state, and denies their privileges.

"Make known in our name unto the House, that none therein shall presume henceforth to meddle with any thing concerning our government, or deep matters of state. . . You shall resolve them in our name, that we think ourselves very free and able to punish any man's misdemeanour in parliament, as well during the sitting as after,—which we mean not to spare hereafter, upon any occasion of any man's insolent behaviour there that shall be ministered unto us."

* 1 Parl. Hist. 1322.

† Ibid. 1319.

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A.D. 1621. Coke's vindication of the privileges of the House.

His Majesty further insisted that the House had no privileges except such as were granted by him and his predecessors, — intimating that the privileges so granted, if abused, might be recalled. This seems to have thrown the House into a flame; and, according to the Parliamentary History *,

" Sir Edward Coke would have us make a Protestation for our privileges: that he can tell us when both Houses did sit in parliament together, both the Lords and the Commons: that the demand of the privileges of this House by the Speaker was after they began to be questioned, and used to be done at the first meeting of the parliament, in this manner, that if the House might not have their privileges and liberties they would sit silent. He protesteth before God that he ever speaketh his own conscience, but he doth not ever speak his own things, for he for the most part speaketh by warrant of precedents. ' *Omnis qualitas in principali subjecto est in summo gradu,*' as ' *lumen in sole,*' and so are the privileges (which are the laws) of the parliament here in the parliament, ' *in principali subjecto,*' and therefore, ' *in summo gradu.*' The liberties and privileges of parliament are the mother and life of all laws: whereas the King saith, ' he liketh not our stiling our liberties our ancient inheritance, yet he will maintain and give us leave to enjoy the same;' indeed, striketh at the root of all our privileges. ' *Consuetudo Regni,*' is the law of this kingdom. He would have us stand upon the defence of our privileges in this point." †

The matter was referred to a committee, who agreed to a Protestation, —

He moves a " Protestation," which is agreed to and entered in the Journals.

" That the liberties, franchises, privileges, and jurisdictions of parliament, are the ancient and undoubted birth-right and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, state, and the defence of the realm, and of the Church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses, every member of the House hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same; that the Commons in parliament have like liberty and freedom to treat of those matters in such order as in their judgments shall seem fittest, and that

* Vol. i. p. 1355. † 1 Parl. Hist. 1349.

every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by censure of the House itself) for or concerning any speaking, reasoning, or declaring of any matter or matters touching the parliament or parliament business." *

This Protestation, drawn by Sir Edward Coke, was, on his recommendation, adopted by the House, and entered in the Journals. But when the King heard of it he was frantic. He immediately prorogued the Parliament, ordered the Journals to be brought to him at Whitehall. Then, having summoned a meeting of the Privy Council, and ordered the Judges to attend, he in their presence "did declare the said Protestation to be invalid and of no effect; and did further, *manu suâ propriâ*, take it out of the Journal Book of the Clerk of the Commons' House of Parliament." Having torn it in pieces, he ordered an entry to be made in the Council Books, stating that, if allowed to remain, "it might have served for future times to invade most of the rights and prerogatives annexed to the Imperial Crown of this realm." †

Dec. 18.

Dec. 21.

Dec. 30.

The King tears the "Protestation" from the Journals.

This violent proceeding was soon followed by a Proclamation, which, after dwelling on the misdeeds of the House of Commons, particularly the PROTESTATION, — "an usurpation which the majesty of a King can by no means endure," —concluded by dissolving the Parliament. ‡

Jan. 6. 1622. Parliament dissolved.

* 1 Parl. Hist. 1361. † Ibid. 1363.

‡ Ibid. 1370. It was very severe on Coke and his associates as "ill-tempered spirits," and accused them of "sowing tares with the wheat."

CHAPTER X.

CONCLUSION OF THE LIFE OF SIR EDWARD COKE.

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FROM the middle of the sixteenth to the middle of the eighteenth century, there were few public men of much note who, in the course of their lives, had not been sent as prisoners to the Tower of London. This distinction was now acquired by Sir Edward Coke. He was committed along with Selden, Prynne, and other leaders of the opposition. At the same time, orders were given for sealing up the locks and doors of his house in Holborn and of his chambers in the Temple, and for seizing his papers.* A general pardon being about to be published, according to usage on the dissolution of parliament, the Council deliberated for some time respecting the mode by which he should be deprived of the benefit of it. The first expedient was to exclude him by name; and then the proposal was adopted of preferring an indictment against him, so that he might come within the exception of such as were under prosecution.

Dec. 27. 1621. Coke committed to the Tower.

The ex-Chief Justice being carried to the Tower, and lodged in a low room which had once been a kitchen, he found written on the door of it by a wag — "This room has long wanted a Cook;"† and he was soon after complimented in the following distich, —

"Jus condere cocus potuit, sed condere jura
Non potuit; potuit condere jura cocus."

Instead of being prosecuted for his speeches in the House of Commons, the true ground of his imprisonment, he was examined before the Privy Council on a stale and ground-

* The "Instructions to the Gentlemen that are to search Sir Edward Coke's papers," are still extant. There is an injunction "to take some of his servants or friends in their company, who shall be witnesses that they meddle with nothing that concerns his land or private estate." — *Cotton MS., Titus B.* vii. 204

† D'Israeli's James I., p. 125.

less charge, that he had concealed some depositions taken against the Earl of Somerset; — he was accused of arrogant speeches when Chief Justice, especially in comparing himself to the prophet Samuel; — and an information was directed to be filed against him in the Star Chamber, respecting the bond for a debt due to the Crown, which he had taken from Sir Christopher Hatton. By way of insult, Lord Arundel was sent to him with a message "that the King had given him permission to consult with eight of the best learned in the law on his case." But he returned thanks for the monarch's attention, and said "he knew himself to be accounted to have as much skill in the law as any man in England; and, therefore, needed no such help, nor feared to be judged by the law: he knew his Majesty might easily find a pretence whereby to take away his head; but against this it mattered not what might be said." * His confinement was, at first, so rigorous, that "neither his children or servants could come at him;" † but he was soon allowed to send for his law books — ever his chief delight, — and he made considerable progress with his Commentary on Littleton, which now engrossed all his thoughts.

He employs himself on "Co. Litt."

After a few months' confinement, the proceedings against him were dropped; and in consequence of the intercession of Prince Charles he was set at liberty.‡ The King, however, finally struck his name out of the list of Privy Councillors, and, declaring his *patriotism* to proceed from disappointed ambition, exclaimed in spleen, "He is the fittest instrument for a tyrant that ever was in England." §

He is released on the intercession of the Prince of Wales.

No parliament sitting for two years, Sir Edward Coke, during this interval, remained quiet at his seat in Buckinghamshire; but, there being an intention of calling a new parliament, he was, in the autumn of 1623, put into a com-

* D'Israeli's James I., 126. † Roger Coke.

‡ The following dialogue is said to have passed between the Prince and the King on this occasion: — *P.* "I pray that your Majesty would mercifully consider the case of Sir Edward Coke." *K.* "I know no such man." *P.* "Perhaps your Majesty may remember *Mr. Coke.*" *K.* "I know no such man. By my saul, there is one Captain Coke, the leader of the faction in parliament." — *Sloane MSS. Feb.* 2. 1621–22, *in the British Museum.*

§ Wilson's Life of James I., 191.

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mission with several others, requiring them to proceed to Ireland, and make certain inquiries there, — a common mode, in the Stuart reigns, of inflicting banishment on obnoxious politicians. He had formerly complained of this abuse of the royal prerogative; but on this occasion he dextrously said, "he was ready to conform to his Majesty's pleasure, and that he hoped in the sister isle to discover and rectify many great abuses." This threat so alarmed the Court that he was allowed to remain at home. Afterwards, when speaking of this practice, he said, "No restraint, be it ever so little, but is imprisonment; and foreign employment is a sort of honourable banishment. I myself was designed to go to Ireland; I was willing to go, and hoped, if I had gone, to have found some Mompessons there." *

A.D. 1624. Coke defeats an attempt to banish him to Ireland.

The Spanish match, which the nation so much disliked, having been suddenly broken off, and a war with Spain, which was greatly desired in England, now impending, a sudden change arose in the state of parties, and for a time a reconciliation was effected between Buckingham and the leaders of the Puritans. To court them, he even went so far as to encourage schemes for abolishing the order of bishops, and selling the dean and chapter lands in order to defray the expenses of the war.

Under these circumstances the new parliament was called, and Sir Edward Coke was returned for Coventry, having still remained Recorder of that city, and kept up a friendly intercourse with its inhabitants. At the commencement of the session he appeared as a supporter of the Government, and he declared Buckingham to be the "saviour of his country." †

Coke for a short time reconciled to Buckingham. Feb. 1624.

He deserves much credit for carrying the act of parliament, which is still in force, abolishing monopolies, and authorising the Crown to grant patents securing to inventors for a limited time the exclusive exercise of their inventions as a reward for their genius and industry.‡

* Rushworth, i. 523.; 2 Parl. Hist. 257.

† Clarendon says, with great spite, "Sir Edward Coke blasphemously called him Our Saviour."—*Hist.* vol. i. p. 9.

‡ Stat. 21 James I. c. 3. Hume says, "This bill was conceived in such terms as to render it merely declaratory; and all monopolies were condemned

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The most exciting proceeding before this parliament was the impeachment of Lionel Cranfield, Earl of Middlesex, with whom Buckingham had quarrelled, after having made him, from a City merchant, Lord High Treasurer of England. He was charged with bribery and other malpractices in the execution of his office.

A.D. 1624. May. Coke conducts the impeachment of the Earl of Middlesex.

Sir Edward Coke, now in his seventy-third year, appeared at the bar of the House of Lords as chief manager for the Commons. After a somewhat prolix preamble respecting impeachments in general, he said, —

"The House of Commons have appointed me to present three enormities to your Lordships, much against my inclination, other Members of their House being far more sufficient, as well in regard of my great years, as of other accidents; yet I will do it truly, plainly, and shortly. The first is gross and sordid bribery. Here I crave favour if I should seem tedious in some particulars; for circumstances to things are like shadows to pictures, to set them out in fuller representation." His long opening he at last concluded in these words: — "All this I speak by command; I pray your Lordships to weigh it well with solemn consideration, and to give judgment according to the merits."

The noble defendant had done various things, as head of the Treasury, which would now be considered very scandalous; but he had only imitated his predecessors, and was imitated by his successors. Yet he was found *guilty*, and adjudged "to lose all his offices which he holds in this kingdom; to be incapable of any office or employment in future; to be imprisoned in the Tower during the King's pleasure; to pay a fine of 50,000*l.*; never to sit in parliament any more; and never to come within the verge of the Court." *

At the close of the session, Sir Edward Coke retired to Stoke Pogis, and there occupied himself with his legal studies till he heard of the death of James I., in the spring of the following year.

May 29.

March 27. 1625.

He immediately came to his house in Holborn upon the

as contrary to law and to the known liberties of the people. It was then supposed that every subject of England had entire power to dispose of his own actions, provided he did no injury to any of his fellow subjects; and that no prerogative of the king, no power of any magistrate, nothing but the authority alone of the laws, could restrain that unlimited freedom."— Vol. vi. p. 143.

* Lords' Journals; 1 Parl. Hist. 1411—1478.

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report that there was an intention to reassemble the old parliament, which had expired with the King who called it; but he found that, although Charles had expressed a wish to that effect, a proclamation soon came out for the election of a new parliament. He was again returned for Coventry.

A.D. 1625. Accession of Chas. I.

June 22. Coke's moderation.

At the commencement of the session his demeanour was marked by moderation. He entertained good hopes of the new Sovereign, and was resolved to give him every chance of a quiet and prosperous reign. Therefore, on the first day of business, when it was expected that he would move, as he had done on former occasions, to appoint a committee for grievances, "he moved that there might be no committee for grievances, because this was the very beginning of the new King's reign, in which there can be no grievances as yet." *

His motion for an inquiry into the expenditure of the Crown.

However, he speedily quarrelled with the Court; and when the motion for a supply was made, he moved, by way of amendment, for a committee to inquire into the expenditure of the Crown; speaking in this wise: —

"*Necessitas affectata, invincibilis et improvida.* If necessity comes by improvidence, there is no cause to give. No king can subsist in an honourable estate without three abilities: — 1. To be able to maintain himself against sudden invasions. 2. To aid his allies and confederates. 3. To reward his well-deserving servants. But there is a leak in the government, whereof these are the causes: — Frauds in the customs — new invented offices with large fees — old unprofitable offices which the King might justly take away with law, love of his people, and his own honour — the King's household out of order — upstart officers — voluntary annuities or pensions which ought to be stopped till the King is out of debt and able to pay them — costly diet, apparel, buildings, still increase the leakage: the multiplicity of forests and parks, now a great charge to the King, might be drawn into great profit to him." †

In his reply he said, —

"Two leaks would drown any ship. Solum et malum concilium, is a bottomless sieve. An officer should not be *cupidus alienæ rei, parcus suæ. Misera servitus est ubi lex vaga aut incognita.* Segrave, Chief Justice, was sentenced for giving sole counsel to

* 2 Parl. Hist. 5. † Ibid. 11.

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the King against the commonwealth. I would give 1000*l.* out of my own estate, rather than grant any subsidy now."

A.D. 1625. Aug. 12. Abrupt dissolution of parliament.

The committee was carried, and was proceeding so vigorously in the inquiry into grievances, that the King abruptly dissolved the parliament.

Feb. 1626. Expedient to exclude Coke from the new parliament by making him a Sheriff.

But a supply being soon indispensable, from the exhausted state of the exchequer, a new parliament was to be summoned, and, to make it tractable, the notable expedient was invented of appointing the chief opposition leaders sheriffs of counties, upon the supposition that they would thereby be disqualified to sit in the House of Commons. The ex-Chief Justice Coke, now in his 75th year, was appointed Sheriff of Buckinghamshire. Having in vain petitioned to be excused, on account of his age and the offices which he had heretofore held of much superior dignity, he demurred to taking the oath usually administered to sheriffs, which had remained unchanged since Popish times, and made the sheriff swear to "seek and to suppress all errors and heresies commonly called *Lollories*." "This," he objected, "would compel him to suppress the established religion, since *Lollard* was only another name for *Protestant*." The Judges, being consulted, unanimously resolved that this part of the oath ought to be omitted, "because it is required by statutes which are repealed, having been intended against the religion now professed, then deemed heresy." He likewise excepted to other parts of the oath as unauthorised by any statute; but the Judges said that the residue of the oath, having been administered divers years by the direction of the state, might be continued for the public benefit; and the Privy Council obliged him to take it.*

Feb. 10. He is returned for Norfolk.

Qu. whether he was disqualified by reason of his being a Sheriff?

Nevertheless, not only without bribe, but without solicitation, he was returned to the House of Commons by his native county of Norfolk.† When parliament met, a message from the King was (as we should think, most irregularly and unconstitutionally) brought down from the King by the Chancellor of the Exchequer, "that Sir Edward Coke, being Sheriff of Buckinghamshire, was returned one of the knights

* Cro. Car. 26.

† In his own language, "sine aliqua motione aut petitione inde a me præbitis."

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A.D. 1626.

of the shire for the county of Norfolk, wherefore he hoped the House would do him that right as to send out a new writ for that county." The ground chiefly relied upon was, that, by a statute then in force, sheriffs were obliged constantly to reside within their bailiwicks.* The House referred the matter to the "Committee of Elections and Privileges," who made the unsatisfactory report, "that, after diligent search, they had found many cases *pro* and *con* as to a high sheriff for one county being elected to represent another in parliament." The House ordered them to make further search, and the session came to an end without any decision. Neither he, nor any of the other sheriffs returned to the House, took their seats, but no fresh writs were issued to elect members in their stead; and, on the very day before

June 15.

the dissolution (which, in spite of their exclusion, took place in anger, amidst vain attempts to obtain the redress of grievances), it was "resolved by the House that Sir Edward Coke, standing *de facto* returned a member of that House, should have privilege against a suit in Chancery commenced against him by the Lady Clare."†

Coke serves the office of Sheriff with great distinction.

He performed the duties of Sheriff in a very exemplary manner; and we are told that, when the assizes came round, he rode out to meet the Judges at the head of a grand cavalcade. He likewise stood behind them very worshipfully, with a white wand in his hand. Whether they consulted him, either publicly or privately, on any knotty points of law which arose before them, we are not informed; but, at a pinch, he must have been most serviceable, although he used to say "If I am asked a question of common law, I should be ashamed if I could not immediately answer it; but if I am asked a question of statute law, I should be ashamed to answer it without referring to the statute book."

Arbitrary measures of the Government.

Charles, for a time, resorted to the most outrageous measures of internal government, as if parliaments were never to meet again. He raised money by forced loans and benevo-

* This is repealed by 3 Geo. III. c. 15.

† 2 Parl Hist. 44—198. The law is now settled that although a sheriff cannot represent his own county, nor any place within it for which he makes out the precept, he may represent any other county, and even a town within his own county which happens to be a county of itself.

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A.D. 1628.

lences; he arrogated to himself the power of committing to prison, without specifying any offence in the warrant of commitment; he induced the Judges to decide that they had no power to examine such commitments, or to admit the prisoners to bail; preparatory to the pecuniary imposition of ship-money, he required the different sea-ports to furnish a certain number of ships for his service at their own expense; and he billeted soldiers on those who refused his unlawful demands to live at free quarters. But, having been engaged in a war with France, through the wanton caprice of Buckingham, it became indispensably necessary, in the beginning of the year 1628, once more to summon the great council of the nation.

Coke member for Buckinghamshire in a new parliament.

The attempt was not renewed to disqualify Sir Edward Coke, as a parliament man, by any office; and such was his popularity, that he was returned by two counties — Suffolk and Buckinghamshire. He elected to serve for the latter, in which he had fixed his residence, and in which he was now regarded with veneration almost amounting to idolatry.

March 17. The King tries to intimidate the Parliament.

When the new Parliament assembled, the King attempted to daunt the members who he thought might be troublesome, by saying in his opening speech —

"If you shall not do your duties in contributing to the necessities of the state, I must, in discharge of my conscience, use those other means which God hath put into my hands, in order to save that which the follies of some particular men may otherwise put in danger: take not this for a threatening, for I scorn to threaten any but my equals; but as an admonition from him who, by nature and duty, has most care of your preservation and prosperity." *

This was, indeed, the grand crisis of the English constitution. Had our distinguished patriots then quailed, parliaments would thenceforth have been merely the subject of antiquarian research, or perhaps occasionally summoned to register the edicts of the Crown. But, the House of Commons having begun the session with taking the sacrament and holding a solemn fast, on the very first day devoted to public business Sir Edward Coke sounded the charge: —

Coke's defence of public liberty.

"*Dum tempus habemus bonum operemur.* I am absolutely for giving supply to his Majesty; yet with some caution. To tell you

* Rushworth, i. 477.

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of foreign dangers and inbred evils, I will not do it. The state is inclining to a consumption, yet not incurable; I fear not foreign enemies; God send us peace at home. For this disease I will propound remedies: I will seek nothing out of my own head, but from my heart, and out of acts of parliament. I am not able to fly at all grievances, but only at loans. Let us not flatter ourselves. Who will give subsidies, if the King may impose what he will? and if, after parliament, the King may enhance what he pleaseth? I know the King will not do it. I know he is a religious King, free from personal vices; but he deals with other men's hands, and sees with other men's eyes. Will any give a subsidy, if they are to be taxed after parliament at pleasure? The King cannot lawfully tax any by way of loans. I differ from them who would have this of loans go amongst grievances; for I would have it go alone. I'll begin with a noble record; it cheers me to think of it, — 26 Edw. III. It is worthy to be written in letters of gold. Loans against the will of the subject are against reason, and the franchises of the land; and they desire restitution. What a word is that *franchise!* The lord may tax his villein high or low; but it is against the franchises of the land for freemen to be taxed but by their consent in parliament. In *Magna Charta* it is provided that *Nullus liber homo capiatur, vel imprisonetur, aut disseisetur de libero tenemento suo, &c. nisi per legale judicium parium suorum, vel per legem terræ.*" *

The first grievance specifically brought before the House was the decision of the Judges respecting commitments by the King and Council without naming any cause: —

Sir Edward Coke: "This draught of the judgment will sting us, *quia nulla causa fuit ostentata,*— 'being committed by the command of the King, therefore he must not be bailed.' What is this but to declare upon record, that any subject committed by such absolute command may be detained in prison for ever? What doth this tend to but the utter subversion of the choice, liberty, and right belonging to every free-born subject in this kingdom? A parliament brings judges, officers, and all men into good order." †

* 2 Parl. Hist. 237.

† Ibid. 246. Notwithstanding this violent invective against the doctrine that persons committed by the King could not be liberated by the Judges, it would appear that he himself, when on the bench, had sanctioned it. The Lord Chief Justice Hyde, being questioned in the House of Lords for the late decision of the Court of King's Bench on this subject, said, "If we have erred, '*erravimus cum Patribus,*' and they can show no precedent but that our predecessors have done as we have done — sometimes bailing, sometimes re-

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He carried resolutions which, half a century after, were made the foundation of the *Habeas Corpus* Act: —

A.D. 1628.

I. "That no freeman ought to be committed or detained in prison, or otherwise restrained by command of the King or the Privy Council or any other, unless some cause of the commitment, detainer, or restraint be expressed, for which by law he ought to be committed, detained, or restrained.

II. "That the writ of Habeas Corpus cannot be denied, but ought to be granted to every man that is committed or detained in prison or otherwise restrained by the command of the King, the Privy Council, or any other."*

Coke's patriotic regard for the glory of England.

While he attended to grievances at home, he was by no means indifferent to the honour and greatness of the country.

Thus he spoke in the debate on granting a supply to enable the King to repel foreign aggression: —

"When poor England stood alone, and had not the access of another kingdom, and yet had more and as potent enemies as now, yet the King of England prevailed.† In the parliament roll 4 Edw. III., the King and Parliament gave God thanks for his victory against the Kings of Scotland and France; he had them both in Windsor Castle as prisoners. In 3 Rich. II. the King was invironed with Flemings, Scots, and French, and the King of England prevailed. In 13 Rich. II. the King was invironed with Spaniards, Scots, and French, and the King of England prevailed. In 17 Rich. II. wars were in Ireland and Scotland, and yet the King of England prevailed: thanks were given to God; and I hope I shall live to give God thanks for our King's victories. But to this end the King must be assisted by good counsel. In 7 Hen. IV. one or two great men about the King mewed him up, that he took no other advice but from them; whereupon the Chancellor took this text for the theme of his speech in parliament, 'Multorum consilia requiruntur in magnis; in bello qui maxime timent sunt in maximis periculis.' Let us give, and not be afraid of our enemies; let us supply bountifully, cheerfully, and speedily. It shall never be said we deny all supply; I think myself bound

mitting, sometimes discharging. Yet we do never bail any committed by the King, or his Council, till his pleasure be first known; *and thus did the Lord Chief Justice Coke in Raynard's case.*"—2 Parl. Hist. 292.

* 2 Parl. Hist. 259.

† "Poor England! thou art a devoted deer,
Beset with every ill but that of fear." — *Cowper.*

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where there is *commune periculum*, there must be *commune auxilium*."*

A.D. 1628. Coke brings forward the Petition of Right.

Still he was determined that, before the supply was actually given, there should be an effectual redress of grievances. He therefore framed the famous PETITION OF RIGHT. This second MAGNA CHARTA enumerated the abuses of prerogative from which the nation had lately suffered, — levying forced loans and benevolences — unlawful imprisonments in the name of the King and the Privy Council — billeting soldiers to live at free quarters — with various other enormities, — and, after declaring them all to be contrary to former statutes and the laws and customs of the realm, assumed the form of an act of the Legislature, and, in the most express and stringent terms, protected the people in all time to come from similar oppressions. There were various conferences upon the subject between the two Houses, which were chiefly conducted on the part of the Commons by Sir Edward Coke. What seems very strange to us, — the Attorney General and other Crown lawyers were allowed to argue against the Petition at the bar, as counsel for his Majesty, and to combat its positions and enactments; but they were completely refuted by the ex-Chief Justice, who not only had reason on his side, but possessed much more constitutional law and vigour of intellect than any of them, or all of them put together. The King, afraid of the impression made upon the Lords, sent a message to both Houses, expressing his willingness to concede them a bill in confirmation of King John's MAGNA CHARTA, without additions, paraphrases, or explanations; assuring them that no future occasion of complaint should arise. Mr. Secretary Cooke, with soft and honied expressions, moved that the House should be content with the King's assurances; and many members, persuaded by his rhetoric, were intimating their assent to waive the Petition: —

Sir Edward Coke: "Was it ever known that general words were a satisfaction to particular grievances? Was ever a verbal declaration of the King *verbum Regis?* Where grievances be,

* 2 Parl. Hist. 255. It is curious to observe that Coke always dates historical events by the year of a king's reign; and I suspect that his knowledge of history was chiefly drawn from poring over the Statute Book and the Rolls of Parliament.

the parliament is to redress them. Did ever parliament rely on messages? The King's answer is very gracious, but we have to look to the law of the realm. I put no diffidence in his Majesty, but the King must speak by record; and in particulars, not in generals. Did you ever know the King's message come into a bill of subsidies? All succeeding kings will say, 'Ye must trust me as well as ye did my predecessor, and give faith to my messages.' But messages of love have no lasting endurance in parliament. Let us put up a PETITION OF RIGHT. Not that I distrust the King, but that I cannot take his trust save in a parliamentary way." *

Proviso introduced in the House of Lords to save the "sovereign power of the Crown."

The Commons resolved that they would proceed; and the Lords passed the bill, but were prevailed upon by the courtiers to add a proviso, which would have completely nullified its operation, "that nothing therein contained should be construed to entrench on the sovereign power of the Crown." The bill coming back to the House of Commons for their concurrence in the amendment, Sir Edward Coke said, —

On the recommendation of Coke this is rejected by the Commons.

"This is *magnum in parvo.* It is a matter of great weight, and, to speak plainly, it will overthrow all our PETITION; it trenches on all parts of it; it flies at loans, at imprisonment, and at billeting of soldiers. This turns all about again. Look into all the petitions of former times; the assenting answer to them never contained a saving of the king's sovereignty. I know that prerogative is part of the law, but 'sovereign power' is no parliamentary word. In my opinion, it weakens Magna Charta and all the statutes whereon we rely for the declaration of our liberties; for they are absolute without any saving of 'sovereign power.' Should we now add it, we shall weaken the foundation of law, and then the building must fall. If we grant this, by implication we give a 'sovereign power' above all laws. 'Power' in law is taken for *a power with force;* the sheriff shall take the *power of the county.* What it means here, God only knows. It is repugnant to our PETITION. This is a PETITION OF RIGHT granted on acts of parliament, and the laws which we were born to enjoy. Our ancestors could never endure a *salvo jure suo* from kings — no more than our kings of old could endure from churchmen *salvo honore Dei et Ecclesiæ.* We must not admit it, and to qualify it is impossible. Let us hold our privileges according to law. That power which is above the law, is not fit for the King to ask, or the people to yield. Sooner would I have the prerogative abused,

* 2 Parl. Hist 348.; Rushworth, i, 538.

CHAP. X.

A.D. 1628.

and myself to lye under it; for though I should suffer, a time would come for the deliverance of the country." *

The amendment was rejected by the Commons; and, after several conferences, the Lords agreed "not to insist upon it." Thereupon the Commons sent a message to the Lords by Sir Edward Coke —

"To render thanks to their Lordships for their noble and happy concurrence with them all this parliament; to acknowledge that their Lordships had not only dealt nobly with them in words, but also in deeds; that this Petition contained the true liberties of the subjects of England, and their Lordships concurring with the Commons had crowned the work; that this parliament might be justly styled 'PARLIAMENTUM BENEDICTUM;' and to ask the Lords to join in beseeching his Majesty, for the comfort of his loving subjects, to give a gracious answer." †

The King's attempt to return an evasive answer.

Buckingham would not venture to advise a direct *veto* by the words "*Le Roy s'avisera*," but framed the following evasive and fraudulent answer: —

"The King willeth that right be done according to the laws and customs of the realm; and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs or oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience as well obliged as of his own prerogative." ‡

The Commons returned to their chamber in a rage; and Speaker Finch, the devoted tool of the Court, seeing their excited condition, exclaimed, "I am commanded to interrupt any member who shall asperse a minister of state." Nevertheless, Sir Edward Coke rose, but, according to Rushworth, "overcome with passion, seeing the desolation likely to ensue, he was forced to sit, when he began to speak through the abundance of tears." The veteran statesman, having in some measure recovered his self-command, thus proceeded: —

Coke's denunciation of the Duke of Buckingham.

"I now see that God has not accepted of our humble and moderate carriages and fair proceedings; and the rather, because I fear they deal not sincerely with the King and with the country in making a free representation of all these miseries. I repent myself, since things are come to this pass, that I did not sooner declare the whole truth; and, not knowing whether I shall ever

* 2 Parl. Hist. 357. † Ibid. 372. ‡ Ibid. 377.

speak in this House again, I will do it now freely. We have dealt with that duty and moderation that never was the like after such a violation of the liberties of the subject. What shall we do? Let us palliate no longer; if we do, God will not prosper us. I think the Duke of Bucks is the cause of all our miseries, and, till the King be informed thereof, we shall never go out with honour or sit with honour here. That man is the grievance of grievances. Let us set down the causes of all our disasters, and they will all reflect upon him. It is not the King, but the Duke." — Cries, "'tis he!" "'tis he!"

Rushworth adds, "This was entertained and answered with a full acclamation of the House, — as when one good hound recovers the scent, the rest come in with full cry." *

The Lords and Commons agreed upon a joint address to the King, which was delivered to him sitting on the throne, saying that, "with unanimous consent, they did become humble suitors unto his Majesty, that he would be pleased to give a clear and satisfactory answer to their PETITION OF RIGHT." The King said that "he intended by his former answer to give them full satisfaction, but that, to avoid all ambiguous interpretations, he was willing to pleasure them as well in words as in substance."

The Petition being now read, — by his desire the clerk, in the usual form in which the royal assent is given to bills, said, "Soit droit fait come il est desiré;" and the PETITION OF RIGHT became a statute of the realm.† There is an entry in the Journals stating, "When these words were spoken, the Commons gave a great and joyful applause, and his Majesty rose and departed." In the evening there were bonfires all over London, and the whole nation was thrown into a transport of joy.

The Petition of Right receives the royal assent in due form.

The PETITION OF RIGHT might have led to a quiet and prosperous reign; but, being recklessly violated, before many years elapsed a civil war raged in the kingdom, and the dethroned King lost his life on the scaffold.

The Commons performed their part of the engagement, for they immediately read a third time, and passed, a bill to grant five subsidies to the King; and having ordered Sir

Bill for supply passes which Coke carries up

* Rushworth, i. 609.; Whitelock, p. 10.; 2 Parl. Hist. 410.
† 3 Charles I. ch. i.

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Edward Coke to carry it to the Lords, almost the whole House accompanied him thither, in token of their gratitude and good-will to his Majesty.

A.D. 1628. to the House of Lords.

This good understanding was momentary, for the King still insisted that he had a right to levy tonnage and poundage by his own authority; and when the House of Commons was preparing a remonstrance against this illegal proceeding, he suddenly put an end to the session by a prorogation, saying, "The profession of both Houses in the time of hammering your PETITION was, that you nowise trenched upon my prerogative. Therefore, it must needs be that I have thereby granted you no new power, but only confirmed the ancient liberties of my subjects." He then resorted to the dishonourable expedient of circulating copies of the PETITION OF RIGHT, with the first answer which he had given to it, and he insisted that his prerogatives were in all respects the same as before this parliament was called, so that the right to levy tonnage and poundage was inalienably vested in the Crown.

June 26. Sudden prorogation.

Sir Edward Coke, although deprived of office, and still excluded from the Privy Council, may be considered as having reached the zenith of his fame. Not only was he admired as a statesman and a patriot, but he now secured to himself the station which he has ever since continued to occupy, as the greatest expounder of the common law of England, by giving to the world his "Commentary on Littleton," which had been his laborious occupation for many years. Although the first edition abounded with errors of the press, the value of the book was at once recognised, and he received testimonies in its praise which should have made him rejoice that he had not been wearing away his life in the dull discharge of judicial duties.

Co. Litt.

Parliament again met in the beginning of the following year, but Sir Edward Coke's name is not mentioned in the proceedings of the short session which was then held, except once, when the Speaker was directed to write to him to request his attendance.* No explanation is given of the

Jan. 21. 1629. Coke absent from the short stormy session of 1629.

* Journals, 11th Feb. 1629. "In respect that the term ends tomorrow, and the assizes to follow, and divers members that are lawyers of this House may be gone,

cause of his absence, and, as he continued at bitter enmity with the Court, he was probably detained in the country by illness. We may conjecture the resentful tone in which he would have exposed the violation of the PETITION OF RIGHT, and the prominent part which he would have taken in the famous scene in the House of Commons immediately before the dissolution, when Speaker Finch was held down in the chair while resolutions were carried asserting the privileges of the House.

By his absence he had the good luck to escape the imprisonment inflicted on Sir John Eliot, Hollis, and the other popular leaders, who were afterwards convicted in the Court of King's Bench of a misdemeanor, for what they had done as members of the House of Commons.

He retires from public life.

He appeared in public no more. Although he survived six years, no other parliament was called till his remains had mouldered into dust. Charles had resolved to reign by prerogative alone, and was long able to trample upon public liberty,—till the day of retribution arrived.

A. D. 1629—1634. His occupations.

The first months of Coke's retirement were devoted to the publication of a new edition of his Commentary on Littleton, which was the most accurate and valuable till the *thirteenth*, given to the world in the end of the last century by those very learned lawyers Hargrave and Butler. We have scanty information respecting his occupations, and the incidents which befel him, till the closing scene of his life. He continued to reside constantly at Stoke Pogis. He was never reconciled to Lady Hatton, who, there is reason to fear, grumbled at his longevity. Mr. Garrard, in a letter, written in the year 1633, to Lord Deputy Strafford, says, "Sir Edward Coke was said to be dead, all one morning in Westminster Hall, this term, insomuch that his wife got her brother, the Lord Wimbledon, to post with her to Stoke, to get possession of that place; but beyond Colebrook they met

it is ordered that none shall go forth of town without the leave of the House. Ordered also that the Speaker's letter shall be sent for Sir Edward Coke."—2 *Parl. Hist.* 463. They wanted his assistance in the debate on the claim of the King to levy tonnage and poundage without the authority of parliament. The same day Oliver Cromwell made his maiden speech, in which he denounced a sermon delivered at Paul's Cross as "flat popery."

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A.D. 1629—1634.

with one of his physicians coming from him, who told her of his much amendment, which made them also return to London; some distemper he had fallen into for want of sleep, but is now well again." *

His dislike to physic.

Till a severe accident which he met with, he had constantly refused "all dealings with doctors;" and "he was wont to give God solemn thanks that he never gave his body to physic, nor his heart to cruelty, nor his hand to corruption." † When turned of eighty, and his strength declining rapidly, a vigorous attempt was made to induce him to take medical advice; of this we have a lively account in a letter from Mr. Mead to Sir Martin Stuteville: —

Attempt of his friends to give him the benefit of medical advice.

"Sir Edward Coke being now very infirm in body, a friend of his sent him two or three doctors to regulate his health, whom he told that he had never taken physic since he was born, and would not now begin; and that he had now upon him a disease which all the drugs of Asia, the gold of Africa, nor all the doctors of Europe could cure — old age. He therefore both thanked them and his friend that sent them, and dismissed them nobly with a reward of twenty pieces to each man." ‡

He meets with an accident.

Of his accident, which in the first instance produced no serious effects, there is the following account entered by him in his diary, in the same firm and clear hand which he wrote at thirty: —

"The 3d of May, 1632, riding in the morning in Stoke, between eight and nine o'clock to take the air, my horse under me had a strange stumble backwards and fell upon me (being above eighty years old), where my head lighted near to sharp stubbles, and the heavy horse upon me. And yet by the providence of Almighty God, though I was in the greatest danger, yet I had not the least hurt, nay, no hurt at all. For Almighty God saith by his prophet David, 'the angel of the Lord tarrieth round about them that fear him, and delivereth them,' *et nomen Domini benedictum*, for it was his work."

But he had received some internal injury by his fall, and from this time he was almost constantly confined to the house. His only domestic solace was the company of his daughter,

* Strafford's Letters and Despatches, i. 265.
† Lloyd's State Worthies, ii. 112.
‡ Harleian MS. 390. fol. 534.; Ellis Papers, iii. 263.

Lady Parbeck, whom he had forgiven — probably from a consciousness that her errors might be ascribed to his utter disregard of her inclinations when he concerted her marriage. She continued piously to watch over him till his death.*

His law books were still his unceasing delight; and he now wrote his SECOND, THIRD, and FOURTH INSTITUTES, which, though very inferior to the FIRST, are wonderful monuments of his learning and industry.

Prosecution for a libel upon him.

On one occasion, without his privity, his name was introduced in a criminal prosecution. A person of the name of Jeffes, who seems to have been insane, fixed a libel on the great gate of Westminster Hall, asserting the judgment of Sir Edward Coke, when Chief Justice of the King's Bench, in the case of Magdalen College †, to be *treason*, calling him *traitor* and *perjured Judge*, and scandalising all the profession of the law. The Government thought that this was an insult to the administration of justice not to be passed over, and directed that the offender should be indicted in the Court of King's Bench. Had he been brought before the Star Chamber he could hardly have been more harshly dealt with, for he was sentenced to stand twice in the pillory, to be carried round all the courts in Westminster Hall with a descriptive paper on his breast, to make submission to every court there, to pay a fine of 1000*l.*, and to find sureties for his good behaviour during the remainder of his life. ‡

This proceeding was not prompted by any kindness for the ex-Chief Justice; on the contrary, he was looked upon with constant suspicion, and the Government was eagerly disposed to make him the subject of prosecution. Buckingham had fallen by the hand of an assassin, but his arbitrary system of government was strenuously carried on by Laud and those who had succeeded to power; taxes were levied without

* Extract of letter from Mr. Gerrard to Lord Deputy Strafford, dated 17th of March, 1636: — "Here is a new business revived; your Lordship hath heard of a strong friendship heretofore betwixt Sir Robert Howard and the Lady Parbeck, for which she was called into the High Commission, and there sentenced to stand in a white sheet in the Savoy Church, which she avoided then by flight, and hath not been much looked after since, having lived much out of town, and constantly these last two years with her father at Stoke." He afterwards goes on to give an account of her imprisonment in the Gatehouse, and her escape in the disguise of a page.

† 11 Rep. 66.

‡ Cro. Car. 175.

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authority of Parliament; illegal proclamations were issued, to be enforced in the Star Chamber; and Noy's device of ship-money was almost mature. Sir Edward Coke having then resided in the same county with Hampden, and at no great distance from him, — it is conjectured, without any positive evidence, that they consulted together as to the manner in which the law and the constitution might be vindicated. So much is certain, — that, from secret information which the Government had obtained, Sir Francis Windebank, the Secretary of State, by order of the King and Council, came to Stoke on the 1st of September, 1634, attended by several messengers, to search for seditious papers, and, if any were found, to arrest the author.

A.D. 1634. Coke supposed to have advised Hampden to resist ship-money.

His papers seized by the Secretary of State when he was on his death-bed.

On their arrival they found Sir Edward Coke on his death-bed. They professed that they would, under these circumstances, offer him no personal annoyance; but they insisted on searching every room in the house except that in which he lay, and they carried away all the papers, of whatever description, which they could lay their hands upon. Among these were the original MS. from which he had printed the Commentary on Littleton; the MS. of his Second, Third, and Fourth Institutes, his last will, and many other papers in his handwriting.*

His death.

It is believed that Sir Edward Coke remained ignorant of this outrage, and that his dying moments were undisturbed. He had been gradually sinking for some time, and on the 3d of Sept., 1634, he expired, in the eighty-third year of his age; enjoying to the last the full possession of his mental powers, and devoutly ejaculating, "Thy kingdom come! Thy will be done!"

* There is now extant, in the library at Lambeth, the original inventory of these papers, entitled "A catalogue of Sir Edward Coke's papers, that by warrant from the Council were brought to Whitehall, whereon his Majesty's pleasure is to be known, which of them shall remain there." It begins, "A wainscott box, of his arms, accounts and revenues." The house in Holborn had been searched and rifled at the same time, for there is in the library at Lambeth, another inventory, entitled "A note of such things as were found in a trunk taken from Pepys, Sir Edward Coke's servant, at London, brought to Bagshot by his Majesty's commandment, and then broken up by his Majesty, 9th of September, 1634." Among the items is "One paper of poetry to his children." This may have been the poetical version of his Reports; of which I will afterwards give a specimen. The will was destroyed or lost, to the great prejudice of the family The law MSS., as we shall see, were returned by order of the Long Parliament.

His remains were deposited in the family burying-place at Titleshall, in Norfolk, where a most magnificent marble monument has been erected to his memory, with a very long inscription, of which the following will probably be considered a sufficient specimen: — CHAP. X. A.D. 1634. His funeral.

"Quique dum vixit, Bibliotheca viva,
Mortuus dici meruit Bibliothecæ parens.
Duodecem Liberorum, tredecim librorum Pater." His epitaph.

For the benefit of the unlearned, there is another inscription in the vulgar tongue; which, after pompously describing his life and death, thus edifyingly concludes, —

"Learne Reader to live so, that thou mayst so die."

In drawing his character I can present nothing to captivate or to amuse. Although he had received an academical education, his mind was wholly unimbued with literature or science; and he considered that a wise man could not reasonably devote himself to any thing except law, politics, and industrious money-making. He values the father of English poetry only in as far as the "Canon's Yeoman's Tale" illustrates the statute 5 Hen. IV. c. 4. against Alchymy, or the craft of multiplication of metals; — and he classes the worshipper of the Muses with the most worthless and foolish of mankind: — "The fatal end of these five is beggary, — the alchemist, the monopotext, the concealer, the informer, and the poetaster. His ignorance of science and his contempt for literature.

"Sæpe pater dixit, studium quid inutile tentas?
Mæonides nullas ipse reliquit opes."*

He shunned the society of Shakspeare and Ben Jonson, as of *vagrants* who ought to be set in the stocks, or whipped from tithing to tithing. The Bankside Company having, one summer, opened a theatre at Norwich, while he was Recorder of that city, in his next charge to the grand jury he thus launched out against them: —

"I will request that you carefully put in execution the statute against *vagrants*; since the making whereof, I have found fewer thieves, and the gaol less pestered than before. The abuse of *stage players*, wherewith I find the country much troubled, may easily be reformed, they having no commission to play in any

* 3 Institute, 74.

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place without leave; and therefore, if by your willingness they be not entertained, you may soon be rid of them." *

His progress in science we may judge of by his dogmatic assertion that "the metals are six, and no more; — gold, silver, copper, tin, lead, and iron; and they all proceed originally from sulphur and quicksilver, as from their father and mother." †

His solitary joke.

He is charged by Bacon with talking a great deal in company, and aiming at jocularity from the bench: but he associated chiefly with dependants, who worshipped him as an idol; and the only jest of his that has come down to us consoles us for the loss of all the rest: — COWELL'S INTERPRETER being cited against an opinion he had expressed when Chief Justice, he contemptuously called the learned civilian Dr. *Cow-heel.* ‡

His greatness as a lawyer and a judge.

Yet we are obliged to regard a man with so little about him that is ornamental, or entertaining, or attractive, as a very considerable personage in the history of his country. Belonging to an age of gigantic intellect and gigantic attainments, he was admired by his contemporaries, and time has in no degree impaired his fame. For a profound knowledge of the common law of England, he stands unrivalled. As a Judge, he was not only above all suspicion of corruption, but, at every risk, he displayed an independence and dignity of deportment which would have deserved the highest credit if he had held his office during good behaviour, and could have defied the displeasure of the Government. To his exertions as a parliamentary leader, we are in no small degree indebted for the free constitution under which it is our happiness to live. He appeared opportunely at the commencement of the grand struggle between the Stuarts and the people of England. It was then very doubtful whether taxes were to be raised without the authority of the House of Commons; and whether, parliaments being disused, the edicts of the King were to have

* It is supposed to have been out of revenge for this charge, that Shakspeare parodied his invective against Sir Walter Raleigh, in the challenge of Sir Andrew Aguecheek. — See Boswell's Shakspeare, ii. 442.

† 3 Inst. ch. xx.

‡ Cowell had given great offence by asserting that the King was not bound by the laws, insomuch that by order of the House of Commons he was committed to custody, and his book was publicly burnt. — *Wilson's Memor. Cantabrig.* p. 60.

the force of law. There were other public-spirited men, who were ready to stand up in defence of freedom; but Coke alone, from his energy of character, and from his constitutional learning, was able to carry the PETITION OF RIGHT; and upon his model were formed Pym and the patriots who vindicated that noble law on the meeting of the Long Parliament.

Coke as an author.

He is most familiar to us as an author. Smart legal practitioners, who are only desirous of making money by their profession, neglect his works, and sneer at them as pedantic and antiquated; but they continue to be studied by all who wish to know the history, and to acquire a scientific and liberal knowledge of our juridical and political institutions.

His Reports.

I have already mentioned his REPORTS, the first eleven parts of which he composed and published amidst his laborious occupations as Attorney General and Chief Justice. The *twelfth* and *thirteenth* parts were among the MSS. seized by the Government when he was on his death-bed. In consequence of an address by the House of Commons to the King on the meeting of the Long Parliament, seven years after, they were restored to his family, and printed. Although inferior in accuracy to their predecessors, they were found to contain many important decisions on political subjects, which he had not ventured to give to the world in his lifetime.*

There are now more volumes of law reports published every year than at that time constituted a lawyer's library.† In the eighty years which elapsed between the close of the Year-Books and the end of the 16th century, Plowden, Dyer, and Kielway were the only reporters in Westminster Hall. In the great case of the POSTNATI, Coke tells us of the new plan which he adopted of doing justice to the Judges: —

* The first three parts were published in 1601, the fourth and fifth in 1603, and the following six parts between 1606 and 1616, when the Reporter presided in C. P. or K. B. These were all originally printed in Norman French. The 12th and 13th parts did not see the light till 1654 and 1658, when they appeared in an English translation; the use of French in law proceedings having been forbidden by an ordinance of the Long Parliament. The whole have been lately most admirably edited by my friend Mr. Farquhar Fraser.

† There were then only twelve volumes of Reports extant, of which nine were YEAR-BOOKS. The compilations called "Abridgments," however, were dreadfully bulky.

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"And now that I have taken upon me to make a report of their arguments, I ought to do the same as fully, truly, and sincerely as possibly I can; howbeit, seeing that almost every judge had in the course of his argument a particular method, and I must only hold myself to one, I shall give no just offence to any, if I challenge that which of right is due to every reporter, that is, to reduce the sum and effect of all to such a method as, upon consideration had of all the arguments, the reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolution of the case in question." *

Notwithstanding the value of his Reports, no reporter could venture to imitate him. He represents a great many questions to be "*resolved*" which were quite irrelevant, or never arose at all in the cause; and these he disposes of according to his own fancy. Therefore he is often rather a codifier or legislator than a reporter; and this mode of settling or reforming the law would not now be endured, even if another lawyer of his learning and authority should arise. Yet all that he recorded as having been adjudged was received with reverence.† The popularity of his Reports was much increased by the publication of a metrical abstract or rubric of the points determined, beginning with the name of the plaintiff. Thus:

Hubbard: "If lord impose excessive fine,
The tenant safely payment may decline." — (4 Rep. 27.)
Cawdry: "'Gainst common prayer if parson say
In sermon aught, bishop deprive him may." — (5 Rep. 1.)

"Coke upon Littleton."

His *opus magnum* is his Commentary on Littleton, which in itself may be said to contain the whole common law of England as it then existed. Notwithstanding its want of method and its quaintness, the author writes from such a full mind, with such mastery over his subject, and with such unbroken spirit, that every law student who has made, or is ever likely to make, any proficiency, must peruse him with delight.

He apologises for writing these Commentaries in English, "for that they are an introduction to the knowledge of the national law of the realm; a work necessary, and yet heretofore not undertaken by any, albeit in all other professions there are the like. I cannot conjecture that the general

* 7 Rep. 4 a. † Bacon's Works, v. 473.

communicating these laws in the English tongue can work any inconvenience." * CHAP. X.

This work, which he thus dedicates —

"HÆC EGO GRANDÆVUS POSUI TIBI, CANDIDE LECTOR" —

was the valuable fruit of his leisure after he had been tyrannically turned out of office, and in composing it he seems to have lost all sense of the ill usage under which he had suffered, for he refers in his Preface to "the reign of our late sovereign lord King James of *famous and ever blessed memory.*"†

The First Institute may be studied with advantage, not only by lawyers, but by all who wish to be well acquainted with the formation of our polity, and with the manners and customs prevailing in England in times gone by. If Hume, who was, unfortunately, wholly unacquainted with our juridical writers, had read the chapters on Knights' Service, Socage, Grand Serjeantie, Frankalmoigne, Burgage, and Villenage, he would have avoided various blunders into which he has fallen in his agreeable but flimsy sketch of our early annals. After Bacon, in his Essays and in his philosophical writings, had given specimens of vigorous and harmonious Anglicism which have never been excelled, Coke, it must be confessed, was sadly negligent of style as well as of arrangement; — but he sometimes accidentally falls into rhythmical diction, as in his concluding sentence: "And, for a farewell to our jurisprudent, I wish unto him the gladsome light of jurisprudence, the lovelinesse of temperance, the stabilitie of fortitude, and the soliditie of justice."

His other "Institutes," as he called them, published under an order of the House of Commons ‡, are of very inferior merit. The Second Institute contains an exposition of MAGNA CHARTA and other ancient statutes; the Third treats of cri- Second, Third, and Fourth Institutes.

* Preface. † P. xxxvii.

‡ Journals, 12th May, 1641. "Upon debate this day had in the Commons House of Parliament, the said House did then desire and hold it fit that the heir of Sir Edward Coke should publish in print the Commentary on Magna Charta, the Pleas of the Crown, and the Jurisdiction of Courts, according to the intention of the said Sir Edward Coke; and that none but the heir of the said Sir Edward Coke, or he that shall be authorised by him, do presume to publish in print any of the aforesaid books or any copy hereof." This order was made the very same day on which the Earl of Strafford was beheaded.

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minal law*; and the Fourth explains the jurisdiction of all courts in the country, from the Court of Parliament to the Court of Pie Poudre. He was likewise the author of a Book of "Entries," or legal precedents; a treatise on Bail and Mainprize; a compendium of Copyhold Law, called "The Complete Copyholder;" and "A Reading on Fines and Recoveries," which was regarded with high respect till these venerable fictions were swept away.

He represents himself as taking no great delight in legal composition, and I most heartily sympathise with the feelings he expresses:—

"Whilst we were in hand with these four parts of the Institutes, we often having occasion to go into the city, and from thence into the country, did in some sort envy the state of the honest ploughman and other mechanics; for one, when he was at his work, would merrily sing, and the ploughman whistle some self-pleasing tune, and yet their work both proceeded and succeeded; but he that takes upon him to write, doth captivate all the faculties and powers both of his mind and body, and must be only attentive to that which he collecteth, without any expression of joy or cheerfulness whilst he is at his work." †

His passionate love of his profession.

He had a passionate attachment to his own calling, and he was fully convinced that the blessing of Heaven was specially bestowed on those who followed it. Thus he addresses the young beginner:—

"For thy comfort and encouragement, cast thine eyes upon the sages of the law that have been before thee, and never shalt thou find any that hath excelled in the knowledge of the laws but hath sucked from the breasts of that divine knowledge, honesty, gravity, and integrity, and, by the goodness of God, hath obtained a greater blessing and ornament than any other profession to their family and posterity. It is an undoubted truth, that the just shall flourish as the palm tree, and spread abroad as the cedars of Lebanus. Hitherto, I never saw any man of a loose and lawless life attain to any sound and perfect knowledge of the said laws; and on the other side, I never saw any man of excellent judgment in the

* The most curious chapter is on "conjuration, witchcraft, sorcery, or enchantment," in which he tells us of wizards

"By rhimes that can pull down full soon
From lofty sky the wandering moon,"

and highly applauds the legislature for punishing with death "such great abominations."

† Epilogue to 4th Institute.

laws but was withal (being taught by such a master) honest, faithful, and virtuous." "Wherefore," he says, "a great lawyer never dies *improlis aut intestatus*, and his posterity continue to flourish to distant generations." *

In his old age he agreed with the Puritans, but he continued to support the Established Church; and, a great peer threatening to dispute the rights of the Dean and Chapter of Norwich, he stopped him by saying, "If you proceed, I will put on my cap and gown, and follow the cause through Westminster Hall." † From his large estates he had considerable ecclesiastical patronage, which he always exercised with perfect purity, saying, in the professional jargon of which he was so fond, "Livings ought to pass by *Livery and Seisin*, and not by *Bargain and Sale*." ‡

The distribution of his time.

He certainly was a very religious, moral, and temperate man, although he was suspected of giving to LAW a considerable portion of those hours which, in the distribution of time, he professed to allot to PRAYER and the MUSES, according to his favourite Cantalena, —

"Sex horas somno, totidem des legibus æquis,
Quatuor orabis, des epulisque duas,
Quod superest ultra sacris largire camœnis." §

His style of living.

His usual style of living was plain, yet he could give very handsome entertainments. Lord Bacon tells us that "he was wont to say, when a great man came to dinner at his house unexpectedly, 'Sir, since you sent me no notice of your coming, you must dine with me; but, if I had known of it in due time, I would have dined with you.'" ‖ He once had the honour of giving a dinner to Queen Elizabeth, and she made him a present of a gilt bowl and cover on the christening of one of his children ⸸; but he was never very

* See Preface to "Second Report."

† Lloyd's State Worthies, p. 825.

‡ He tried to carry a law that on every presentation the patron should be sworn against simony, as well as the incumbent. —*Roger Coke's Vindication*, p. 266.

§ Thus varied: —

"Six hours to law, to soothing slumber seven,
Eight to the world allow — the rest to Heaven."

Or —

"Six hours to law, to soothing slumbers seven,
Ten to the world allot, and all to Heaven."

See Macaulay's Essays, vol. i. p. 367.

‖ Apophthegms, 112.

⸸ Nichol's Progresses of Elizabeth, iii. 467. 568.

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anxious about the personal favour of the sovereign, and he considered it among the felicities of his lot that he had obtained his preferments *nec precibus, nec pretio.* Notwithstanding his independence, King James had an excellent opinion of him, and, having failed in his attempts to disgrace him, used to say, "Whatever way that man falls, he is sure to alight on his legs."

His habits and manners.

Sir Edward Coke was a handsome man, and was very neat in his dress, as we are quaintly informed by Lloyd:— "The jewel of his mind was put into a fair case, a beautiful body with comely countenance; a case which he did wipe and keep clean, delighting in good clothes, well worn; being wont to say that the outward neatness of our bodies might be a monitor of purity to our souls."* "The neatness of outward apparel," he himself used to say, "reminds us that all ought to be clean within."† The only amusement in which he indulged was a game of bowls; but, for the sake of his health, he took daily exercise either in walking or riding, and, till turned of eighty, he never had known any illness except one slight touch of the gout.

Contemporary testimonies in his favour.

His temper appears to have been bad, and he gave much offence by the arrogance of his manners. He was unamiable in domestic life; and the wonder rather is, that Lady Hatton agreed to marry him, than that she refused to live with him. Nor does he seem to have formed a friendship with any of his contemporaries. Yet they speak of him with respect, if not with fondness. "He was," said Spelman, "the founder of our legal storehouse, and, which his rivals must confess, though their spleen should burst by reason of it, the head of our jurisprudence."‡ Camden declared that "he had highly obliged both his own age and posterity;"§ and Fuller prophesied that he would be admired "while Fame has a trumpet left her, and any breath to blow therein."‖

Modern writers have treated him harshly. For example,

* Worthies, ii. 297.

† There are many portraits and old engravings of him extant, — almost all representing him in his judicial robes, — and exhibiting features which, according to the rules of pysiogonomy, do not indicate high genius.

‡ Rel. Spelm. p. 150. § Britannia, Iceni, p. 351.

‖ Worthies, Norfolk, p. 251.

Hallam, after saying truly that he was "proud and overbearing," describes him as "a flatterer and tool of the Court till he had obtained his ends."* But he does not seem at all to have mixed in politics till, at the request of Burleigh, he consented to become a law officer of the Crown; and although, in that capacity, he unduly stretched the prerogative, he at no time betrayed any symptom of sycophancy or subserviency. From the moment when he was placed on the bench, his public conduct was irreproachable. Our Constitutional Historian is subsequently obliged to confess that "he became the strenuous asserter of liberty on the principles of those ancient laws which no one was admitted to know so well as himself; redeeming, in an intrepid and patriotic old age, the faults which we cannot avoid perceiving in his earlier life."† In estimating the merit of his independent career, which led to his fall and to his exclusion from office for the rest of his days, we are apt not sufficiently to recollect the situation of a "disgraced courtier" in the reign of James I. Nowadays, a political leader often enhances his consequence by going into opposition, and sometimes enjoys more than ever the personal favour of the sovereign. But, in the beginning of the 17th century, any one who had held high office, if forbidden "to come within the verge of the Court" — whether under a judicial sentence or not, — was supposed to have a stain affixed to his character, and he and those connected with him were shunned by all who had any hope of rising in the world.

He is unjustly censured by Hallam.

Most men, I am afraid, would rather have been Bacon than Coke. The superior rank of the office of Chancellor, and the titles of Baron and Viscount, would now go for little in the comparison; but the intellectual and the noble-minded must be in danger of being captivated too much by Bacon's stupendous genius and his brilliant European reputation, while his amiable qualities win their way to the heart. Coke, on the contrary, appears as a deep but narrow-minded lawyer, knowing hardly anything beyond the wearisome and crabbed learning of his own craft, famous only in his own country, and repelling all friendship or attachment by his harsh man-

Whether would you have been Coke or Bacon?

* Const. Hist. i. 455. † Ib. 476.

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ners. Yet, when we come to apply the test of moral worth and upright conduct, Coke ought, beyond all question, to be preferred. He never betrayed a friend, or truckled to an enemy. He never tampered with the integrity of judges, or himself took a bribe. When he had risen to influence, he exerted it strenuously in support of the laws and liberties of his country, instead of being the advocate of every abuse and the abettor of despotic sway. When he lost his high office, he did not retire from public life "with wasted spirits and an oppressed mind," overwhelmed by the consciousness of guilt,—but, bold, energetic, and uncompromising, from the lofty feeling of integrity, he placed himself at the head of that band of patriots to whom we are mainly indebted for the free institutions which we now enjoy.

Part taken by Lady Hatton in the civil war.

Lady Hatton, his second wife, survived him many years. On his death she took possession of the house at Stoke Pogis, and there she was residing when the civil war broke out. Having strenuously supported the Parliament against the King,—when Prince Rupert approached her with a military force she fled, leaving behind her a letter addressed to him, in which, having politely said "I am most heartily sorry to fly from this dwelling, when I hear your Excellency is coming so near it, which, however, with all in and about it, is most willingly exposed to your pleasure and accommodation," she gives him this caution: "The Parliament is the only firm foundation of the greatest establishment the King or his posterity can wish and attain, and therefore, if you should persist in the unhappiness to support any advice to break the Parliament upon any pretence whatsoever, you shall concur to destroy the best groundwork for his Majesty's prosperity."*

Coke's descendants.

Sir Edward Coke, by his first wife, had seven sons, but none of them gained any distinction except Clement, the sixth, who, being a member of the House of Commons at

* British Museum. Stoke Pogis House, so memorable in our legal annals, one of the places of confinement of Charles I. when in the power of the Parliament, and celebrated by Gray in his "Long Story," having passed from the Gayers, the Halseys, and the Penns, is now the property of my valued friend and colleague, the Right Honourable Henry Labouchere. A column has been erected in the park to the memory of Sir Edward Coke; but there is no other vestige in the parish of his existence, and there are no traditional stories concerning him in the neighbourhood.

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Feb. 1627.

the beginning of the reign of Charles I., in the debate upon the impeachment of the Duke of Buckingham, had the courage to use these words: "It is better to die by an enemy than to suffer at home:" for which there came a message of complaint from the Crown, and he would have been sent to the Tower*, but for the great respect for the ex-Chief Justice, who was sitting by his side, and disdained to make any apology for him.

Roger Coke, a grandson of the Chief Justice, in the year 1660 published a book entitled "Justice Vindicated," which, although without literary merit, contains many curious anecdotes of the times in which the author lived.

In 1747, Thomas Coke, the lineal heir of the Chief Justice, was raised to the peerage by the titles of Viscount Coke and Earl of Leicester; but on his death the male line became extinct. The family was represented, through a female, by the late Thomas Coke, Esq., who, inheriting the Chief Justice's estates and love of liberty, after representing the county of Norfolk in the House of Commons for half a century, was, in 1837, created Viscount Coke and Earl of Leicester, titles now enjoyed by his son. Holkham I hope may long prove an illustration of the saying of the venerable ancestor of this branch of the Cokes, that "the blessing of Heaven specially descends on the posterity of a great lawyer."

* 2 Parl. Hist. 50.

CHAPTER XI.

LIVES OF THE CHIEF JUSTICES FROM THE DEMISE OF SIR EDWARD COKE TILL THE ESTABLISHMENT OF THE COMMONWEALTH.

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A.D. 1616. Sir Henry Montagu.

To lessen the odium of Sir Edward Coke's violent removal from the office of Chief Justice of the King's Bench, there was selected as his successor a man who was very inferior to him in learning and ability, but who was generally popular, and who was capable of performing the part with decent credit. It used to be said of him, "He is perfectly qualified to be a Fellow of All Souls; for if *mediocriter doctus*, he is *bene natus* and *bene vestitus*." Not only was he remarkable for being well born, and dressing genteelly, but he was very good-looking, he had sprightly parts, and his manners were delightful. Though idly inclined, he was capable of occasional application; and all that he had acquired he could turn to the best advantage. In morals he was accommodating; but he would do nothing grossly dishonourable. This was a man to get on in the world and to avoid reverses of fortune, much better than the possessor of original genius, profound knowledge, and unbending integrity.

His family.

SIR HENRY MONTAGU, the subject of the following sketch, who added fresh splendour to an illustrious line, was the grandson of Sir Edward Montagu, whom I have commemorated as making a distinguished figure in the reigns of Henry VIII., Edward VI., and Queen Mary; being a younger son of the eldest son of that Chief Justice. He was born in his father's castle of Boughton, in Northamptonshire, about the middle of the reign of Queen Elizabeth. While yet a baby, a wizard, on examining the palm of his right hand, foretold that he would be "the greatest of the Montagus." This was, then, believed to be a true prophecy; but was interpreted by the supposition that his elder brothers would all die in

infancy, and that the whole of the possessions of the family would centre in him, — not that he was to be Chief Justice of England, Lord Treasurer, and an Earl.

His education.

I do not find any mention of his school; but we know that he studied at Christ's College, Cambridge; and it is said that, while there, he showed good nature, exuberant spirits, and attention to external accomplishments, which made him a general favourite, although he had fallen into some irregularities. Having to make his own bread, at a time when younger sons had nothing to expect but an education becoming their birth, he resolved to try his luck in the law, in which his ancestor had been so prosperous; and he was entered a student of the Middle Temple. Here he showed a great talent for speaking at the "*Moots*," but he was remiss in his attendance at the "*Readings*," or lectures; and he was much better pleased to frequent the ordinaries and the fencing-schools in Alsatia. However, by a few weeks' *cramming*, he got decently well through the examinations and exercises which were then required as tests of proficiency before being called to the bar. Having put on his gown, he was desirous of obtaining practice; but his plan was to get on by bustling about in society, by making himself known, and by availing himself of the good offices of his powerful relatives, — rather than by shutting himself up in his chambers, or by constantly taking notes in the Courts at Westminster.

His professional progress. A.D. 1601.

Although he was employed in some flashy actions for *scan. mag.*, and in some prosecutions which arose out of brawls in taverns, he had not for several years any regular business, and he was beginning to despond, when a new parliament was called. He determined to try his luck in the political line, and he was returned to the House of Commons as member for Higham Ferrers. This was Queen Elizabeth's last parliament, in which the country party was so strong that he thought he should best come forward as a patriot. Accordingly, he joined those who made such a vigorous stand against monopolies that the Queen was obliged in prudence to promise to abandon them. He delivered an animated speech in support of a bill to abolish them, pointing out that

His speeches in the House

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the proceeding against them in the last parliament by petition had proved wholly fruitless.*

A.D. 1601. of Commons.

But he gained the greatest *éclat* by impugning the doctrine that "all the goods of the subject belong to the sovereign, who may resume the whole, or any part, as occasion requires." This doctrine was boldly laid down by Serjeant Heale, who said, "I marvel much, Mr. Speaker, that the House should hesitate about a subsidy asked by the Queen, when all we have is her Majesty's, and she may lawfully at her pleasure take it from us; yea, she hath as much right to all our lands and goods as to any revenue of her crown." This calling forth *coughing*, and cries of OH! OH! he added, "I can prove what I have said by precedents in the times of Henry III., King John, and King Stephen."

Mr. Montagu: "That there was much robbery, public and private, in those reigns, no man may dispute; but I do deny that in those reigns, or in any other reign before or since the coming in of the Conqueror, is any precedent to be found of any tax being lawfully levied except by the will of the great council of the nation. If all the preambles of subsidies be looked into, you shall find they are declared to be '*of free gift.*' Although her Majesty asks a subsidy, it is for us to give it, and not for her to exact it. As for the king taking the goods of the subject, there is the precedent of Edward III. having the tenth fleece of wool and the tenth sheaf of corn; but that was by grant of the Commons at his going to the conquest of France, because all the money then in the realm would not have been any way answerable to raise the great mass he desired. Centuries ago it has been *declared*, the King assenting, that no talliage shall be levied in England but by authority of all the states of the realm."†

He is elected Recorder of London. A.D. 1604.

This was not the way to be made Attorney or Solicitor General, or to gain any favour from the Court,—but by such stout defences of popular rights he rendered himself so acceptable to the City of London, that he was elected Recorder,—although it was said that he aided his interest in this quarter by his attentions to the wives of the aldermen.

Whatever means he employed, he was now in high favour eastward of Temple Bar; and in James's first parliament he was returned as one of the four members to

* 1 Parl. Hist. 920. † Ibid. 921.

represent the City in the House of Commons. But he thought that he had gained all that could be expected from popular courses; and, being admitted into the presence of the new Sovereign when carrying up a City address, he contrived to gain his favour by some observations on the divine right of kings, and the wonderful circumstance that James united in his person not only the claims of the red and the white roses, but of the Saxon and Norman dynasties. In consequence, Mr. Montagu was desired to kneel down, and, having received a gracious blow from the royal sword, to "rise Sir Henry."

A.D. 1604. He becomes a courtier.

He now warmly supported the Ministers; and, in proof of their confidence, he was placed at the head of a committee to review the statutes of the realm, and he was nominated as manager of a conference with the Lords concerning the abolishing of the Court of Wards.*

For several years he entertained warm hopes of being appointed Attorney or Solicitor General; but promotions in the law went on very slowly, insomuch that it was long before a vacancy could be found for Bacon, who was then considered as having a paramount claim. Montagu, therefore, that he might be raised to the bench on the first favourable opportunity, agreed in the meanwhile to become a King's Serjeant. Accordingly, he took the coif by writ in the usual form, on the 4th of February, 1611, and he was created a King's Serjeant by patent under the great seal a few days after. †

He is made King's Serjeant. A.D. 1611.

Continuing Recorder of London, he particularly distinguished himself in the festivities which took place in the City on the infamous and fatal marriage between the Earl and Countess of Somerset. It was not thought inconsistent with the gravity of his office that he should dance a measure with the bride, who was at this time all gaiety and frolic, although she had just done a deed which, when it was discovered, filled mankind with horror.

A.D. 1615.

Three years afterwards, the guilty pair being put on their trial for the murder of Sir Thomas Overbury, Serjeant Montagu appeared as counsel against them. He had a very delicate task to perform; for the King, though compelled by public opinion to permit the trial, wished to spare his

He conducts the prosecution against the Earl and Countess of Somerset.

* Comm. Journ., March, 1604. † Dug. Ch. Ser. 103.

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favourite; and, dreadfully afraid of the disclosures which might be made if one with whom he had been so familiar should be driven to extremity, had with his own hand written this caution as to the manner in which he wished the prosecution to be conducted: — "*Ye will doe well to remember in your præamble that insigne, that the only zeal to justice maketh me take this course, and I have commandit you not to expatiate, nor digresse upon any other points that may not serve clearlie for probation or inducement of that point quhairof he is accused.*"

May 25. 1616.

When the Earl was brought before the Lord High Steward and Court of Peers, Montagu proceeded to open the case against him with fear and trembling, — anxious at once to comply with the King's wishes, and to appear to discharge his duty. Two yeomen of the guard were stationed ready to throw a cloth over the head of the prisoner, and to remove him from the hall, as soon as he should begin to say any thing offensive against the King, "the Lieutenant of the Tower having told him roundly, that, if in his speeches he should tax the King, the justice of England was to stop him, and all the people would cry '*away with him!*' and the evidence should go on without him; and, then the people being set on fire, it would not be in the King's will to save his life."

Thus Serjeant Montagu began: "My Lord High Steward of England, and you my Lords, this cannot but be a heavy spectacle unto you to see that man, that not long since in great place, with a white staff, went before the King, now at this bar hold up his hand for blood; but this is the change of fortune, nay, I might better say, the hand of God and work of justice, which is the King's honour." He then gave a softened narrative of the leading facts of the case, and concluded by admonishing the peers to remember that the prisoner might be guilty, although at the time the murder was done he was in the King's palace, and Sir Thomas Overbury was in the Tower; as "heretofore David, in the like case, was charged with the murder of Uriah; and though David was under his pavillion, and Uriah in the army, yet David was adjudged by Almighty God to be the murderer."

Somerset, trusting to the promise of a pardon which had been joined to the threat of severity, conducted himself quietly during the trial, which terminated in a verdict of *guilty*; and the Countess was persuaded to confess her guilt upon her arraignment. There was joy among the courtiers, as if a great victory had been obtained by the nation over a foreign enemy. The King, much relieved, expressed his satisfaction with Serjeant Montagu, and promised to serve him. A. D. 1616.

Sir Edward Coke, having given mortal offence to the King, and to Buckingham the new favourite, by the lofty independence which he had displayed as a judge, was soon after, on the most frivolous pretences, suspended from exercising the functions of his office of Chief Justice of the King's Bench, and it was determined to dismiss him from it. James suggested Serjeant Montagu as a fit successor; and Bacon, the Attorney General, his adviser, who was then in the near prospect of obtaining the great seal for himself on account of the age and declining health of Lord Chancellor Ellesmere, said that "a better choice could not be made." Returning home from an audience on this subject, Bacon thus wrote to the King: — He is appointed Chief Justice of the King's Bench. Nov. 13.

"I send your Majesty a warrant to the Lord Chancellor for making forth a writ for a new Chief Justice, leaving a blank for the name to be supplied by your Majesty's presence; for I never received your Majesty's express pleasure in it. If your Majesty resolve on Montagu, as I conceive and wish, it is very material, as these times are, that your Majesty have some care that the Recorder succeeding be a temperate and discreet man, and assured to your Majesty's service."

Next day Montagu's appointment as Chief Justice passed the great seal, and a few days after he was solemnly installed in the Court of King's Bench at Westminster. On this occasion there was a grand procession from the Temple to Westminster Hall: — "First went on foot the young gentlemen of the Inner Temple; after them the barristers according to their seniority; next the officers of the King's Bench; then the said Chief Justice himself, on horseback, in his robes, the Earl of Huntingdon on his right hand, and the Lord Nov. 14.

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Willoughby of Eresby on his left, with above fifty knights and gentlemen of quality following." *

When he entered the court he first presented himself at the bar, with Serjeant Hutton on his right hand, and Serjeant Moore on his left. The Lord Chancellor, seated on the bench, then delivered to him the writ by which he was constituted Chief Justice, and thus addressed him upon the duties of his new office. Lord Ellesmere's very spiteful speech, it will be observed, was spoken *at* Sir Edward Coke, and the virtues ascribed to old Montagu were meant to indicate the offences for which the cashiered Chief Justice had incurred the royal displeasure: —

Lord Ellesmere's inaugural address to Chief Justice Montagu.

"This is a rare case, for you are called to a place vacant not by death or cession, but by a motion and deposing of him that held the place before you. It is dangerous in a monarchy for a man, holding a high and eminent place, to be ambitiously popular; take heed of it. In hearing of causes you are to hear with patience, for patience is a great part of a judge; better hear with patience, prolixity and impertinent discourse of lawyers and advocates, than rashly, for default of the lawyer to ruin the client's cause: in the one you lose but a little time; by the other the client loseth his right, which can hardly be repaired. Remember your worthy grandfather, Sir Edward Montagu, when he sat Chief Justice in the Common Pleas: you shall not find that *he* said vauntingly, that he would make 'Latitats' *latitare* †; when *he* did sit Chief Justice in this place, he contained himself within the words of the writ to be 'Chief Justice,' as the King called him '*ad placita coram nobis tenenda*;' but did not arrogate or aspire to the high title of 'CAPITALIS JUSTITIA ANGLIÆ,' or 'CAPITALIS JUSTITIARIUS ANGLIÆ,' an office which Hugh de Burgh and some few others held in times of the barons' wars, and whilst the fury thereof was not well ceased. ‡ *He* never strained the statute 27 Edw. III.

* Dugd. Or. Jur. p. 98. The only procession of this sort I ever witnessed was, when Lord Tenterden took his seat as a peer in the year 1827. The barristers, according to their seniority, all then attended him to the House of Lords.

† This alludes to a controversy between the courts for *custom*, on which the profits of the judges mainly depended. The "latitat" was a contrivance to take causes into the King's Bench from the Common Pleas.

‡ Whoever has done me the honour to read the previous part of this volume, will be aware that the Chancellor is here egregiously mistaken, for there were "Chief Justiciars" from the Conquest till the end of the reign of Henry III.; and the title of "Chief Justice of England," which Coke assumed, had been borne by many of his predecessors after the nature of the office had been altered.

c. 1. to reach the Chancery, and to bring that court and the ministers thereof, and the subjects that sought justice there, to be in danger of *premunire*, an absurd and inapt construction of that old statute.* *He* doubted not but if the King, by his writ under his great seal, commanded the judges that they should not proceed *Rege inconsulto*, then they were dutifully to obey.† *He* challenged not powers from this court to correct all misdemeanors, as well extra-judicial as judicial, nor to have power to judge statutes void, if he considered them against common right and reason, but left the parliament and the King what was common right and reason.‡ Remember the removing and putting down your late predecessor, and by whom, — which I often remember unto you, that it is the great KING OF GREAT BRITAIN §,—whose great wisdom and royal virtue, and religious care for the weal of his subjects, and for the due administration of justice, can never be forgotten."

Montagu thus answered: —

"My most honourable Lord: I must acknowledge the great favours I have received from his Majesty; for, when I do consider my desert, I wonder what I am that he should exalt me to this high place. But I find the Wiseman's saying true, 'in great actions, *cor Regis in manibus Domini,*' and 'what is done, *factum est a Domino.*' I will not inquire into my vow, but I will pay my vow and *pro posse meo.* I will endeavour my best. It hath been a fashion of those that have gone before me to excuse themselves; and this I might do better than they; yet I dare not disable myself, lest I should tax my master's judgment. God I hope will supply what is defective in me. My Lord, what a spur have you put to prick me forward in mentioning my grandfather!" After enlarging on the merits of this worthy sage, he adds, "I will, for my own part, avoid four faults: — idleness, corruption, cowardliness,—and I will not be a heady judge. First, I will not be idle nor over busy. For the second, I have no need to be corrupt, neither in action nor affection, for I have estate sufficient. And,

* This refers to the controversy about staying, by injunction out of Chancery, execution on common law judgments.

† This is a sarcasm upon Coke's greatest glory, —that he would not allow the King to interfere with the regular administration of justice.

‡ Here he touches Coke, who, in Dr. Bonham's case, had talked nonsense about a statute being void if contrary to reason.

§ The title which James had assumed without authority of parliament, and by which he delighted to be called.

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for my courage, if I fear, let me be amerced: I will be a lion in courage, not in cruelty. And for the fourth, I will be glad of good counsel, and I will not be busy in stirring questions, especially of jurisdictions. It comforts me to see the sages who sit there [the puisnies]. And yet I am discomfited in three things, in the loss of my profit, pleasure, and liberty. But I will devote myself *Deo, Regi, et Legi.*" *

The writ being then read, he took the oaths, mounted to the bench, and was placed in the seat of Chief Justice.†

The new Chief Justice had a very slender stock of law, but much good sense and knowledge of the world. He was pronounced to be "a perfect gentleman," and from the uniform courtesy and kindness with which he treated the bar, there was a general disposition to support him. He had one steady puisne on whom he could rely, Mr. Justice Dodderidge, and with his aid he not only despatched the business decently well, but, from his ready elocution, and power of representation, he was regarded by the public as a great Judge. He always himself felt diffident and uncomfortable, and he often wished that "the time might come when he should hear no more of *Executory devises*, or *Recoveries with double voucher.*"

He awards execution against Sir Walter Raleigh. Oct. 28. 1618.

The only proceeding of much public interest in his court while he was Chief Justice was the awarding of execution against Sir Walter Raleigh, after the return of this extraordinary man from the delusive expedition to Guiana. When it was resolved to sacrifice him with a view to appease the indignation of the Spaniards, and it was found that he had done nothing while intrusted with foreign command which could be construed into a capital offence, he was brought up before the Judges of the King's Bench, that they might doom him to die under the sentence pronounced fifteen years ago,—since which, by authority under the great seal, he had been put at the head of a fleet and an army, and been authorised to exercise the power of life and death over the King's subjects. He now pleaded that this was equivalent to a pardon:—

"By that commission," said he, "I gained new life and vigour; for he that hath power over the lives of others, must surely be

* The motto on his rings when he was called Serjeant.
† See Cro. Jac. 407. Moore's Reports, 826—830.

master of his own. In the 22d Edw. III., a man was indicted for felony, and he showed a charter whereby it appeared that the King had hired him for the wars in Gascony, — and it was allowed to be a pardon. Under the commission, I undertook a journey to honour my Sovereign, and to enrich his kingdom; but it had an event fatal to me, the loss of my son, and the wasting of my whole estate."

Montagu, C. J.: "Sir Walter Raleigh, this which you now speak touching your voyage is not to the purpose; there is no other matter now in question here but concerning the judgment of death formerly given against you. That judgment it is now the King's pleasure, for certain reasons best known to himself, to have executed, unless you can show good cause to the contrary. Your commission cannot in any way help you, for by that you are not pardoned. In felony, there may be an implied pardon, as in the case you cite; but in treason, you must show a pardon by express words, and not by implication. There was no word tending to pardon in all your commission; and, therefore, you must say something else to the purpose; otherwise, we must proceed to give execution."

Sir Walter Raleigh: "If your opinion be so, my Lord, I am satisfied, and must put myself on the mercy of the King, who I know is gracious. Concerning that judgment at Winchester passed so long ago, I presume that most who hear me know how that was obtained; nay, I know that his Majesty was of opinion that I had hard measure therein, and if he had not been anew exasperated against me, certain I am I might (if I could by nature) have lived a thousand and a thousand years before he would have taken advantage thereof."

Montagu, C. J.: "Sir Walter Raleigh, you had an honourable trial, and it were wisdom in you now to submit yourself, and to confess that your offence did justly draw down the judgment then pronounced upon you. During these fifteen years you have been as a dead man in the law, and might at any minute have been cut off; but the King in mercy spared you. You might justly think it heavy, if you were now called to execution in cold blood; but it is not so; for new offences have stirred up his Majesty's justice to move him to revive what the law had formerly cast upon you. I know you have been valiant and wise, and I doubt not but you retain both these virtues, which now you shall have occasion to use. Your faith hath heretofore been questioned; but I am satisfied that you are a good Christian, for your book, which is an

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admirable work, doth testify as much. I would give you counsel, but I know you can apply unto yourself far better counsel than I am able to give you. Yet, with the good Samaritan in the Gospel, who, finding one in the way wounded and distressed, poured oil into his wounds and refreshed him, so will I now give unto you the oil of comfort; though (in respect that I am a minister of the law) mixed with vinegar. Fear not death too much nor too little — not too much, lest you fail in your hopes — nor too little, lest you die presumptuously. The judgment of the Court is, *that execution be granted;* and may God have mercy on your soul!" *

It must be admitted that Montagu's language on this occasion forms a striking contrast with the opprobrious epithets which had been used by his predecessor at the original trial; and I know not that any share of the infamy of the new proceeding is to be imputed to him: he had only to declare what the law was, and he expounded it soundly; for in strictness the attainder could only be done away with by letters patent under the great seal, reciting that it was for treason, and granting a free pardon. †

The life of a common law judge became more and more irksome to Montagu. He complained not only of the duties cast upon him for which he was not altogether fit, but of the society he was obliged to keep: sitting all the morning at Westminster, he was expected to dine at Serjeants' Inn, where, in their "compotations," his "companions" talked of nothing but the points which they had ruled upon their circuits, and the cases depending before them in their several courts. The gaiety he had was "grand day in term," or a "reader's feast," when, for the amusement of the judges, the barristers danced with each other in the halls of the Inns of Court. He thought he was better fitted to be a statesman than a lawyer; and he was sure that, holding a political office, he should at any rate pass his time more agreeably.

Dec. 14. 1620. He becomes Lord High Treasurer and a peer.

At last his wishes were gratified, and, in the end of the year 1620, he became Lord Treasurer, and was created a peer by the titles of Baron Kimbolton in the county of

* Jardine's Criminal Trials, vol. i. p. 485—520.

† Lingard truly says that the Chief Justice's address to Raleigh was "conceived in terms of respect unusual on such occasions." — Vol. ix. p. 172.

Huntingdon, and Viscount Mandevil. It is said that this arrangement cost him the sum of 20,000*l.*

He by no means found that the change answered his expectations. Buckingham, arbitrary and rapacious, was sole minister, and wished to engross the profits as well as power of all offices under the crown. Lord Chancellor Bacon, who was supposed to be some check upon the favourite, stood on the brink of the precipice from which he was soon after precipitated.

The new Viscount was ushered into the House of Lords, with the usual solemnities, on the 30th of January, 1621, when the memorable parliament met which put an end to *monopolies* and *judicial corruption* in England.

He took an active part in guiding the deliberations of the Peers on the trial of Sir Giles Mompesson, impeached by the Commons for the oppressions of which he had been guilty under royal grants giving him the exclusive right to deal in commodities; — and he was appointed a manager for the Lords in the conferences between the two Houses which ended in the impeachment of Lord Bacon for bribery. The conscience-stricken defendant having besought their Lordships to "be merciful to a broken reed," they had only to consider of the sentence. A wish was expressed that this should be pronounced by the Viscount Mandevil, long accustomed to judicial proceedings; but he, considering that the illustrious delinquent had been his rival, his friend, and his patron, — with the delicacy of feeling which always distinguished him, declined the invidious task; and his successor, Sir James Ley, the new Chief Justice, was appointed speaker for the occasion.

It was expected that Lord Mandevil would now receive the great seal; but he probably did not desire the elevation, and at any rate it better suited the views of the Government to select for the Chief Judge of the land a Welsh curate, who had never been in a court of justice in his life, and who had nothing of law beyond a few scraps which he had picked up when private secretary to a former Lord Chancellor. While he was learning the A B C of equity, the great seal was put into commission, and Lord Mandevil was prevailed upon to

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July 10. 1621.

consent to be first commissioner. The Duke of Richmond, and Sir Julius Cæsar, Master of the Rolls, were associated with him; and the latter did the actual business of the court till it suited Williams to appear as Lord Keeper.

He is induced to be Lord President of the Council.

In less than a twelvemonth from the time of his receiving the Treasurer's wand, — on account of a difference with Buckingham, he was obliged to resign it, and to be contented with the office of Lord President of the Council.* This office he retained during the remainder of the present, and the early part of the succeeding, reign. Without taking any conspicuous part, he seems ever after to have acquiesced in, and supported, all the measures of the Court. In consequence, in 1626, he was created Earl of Manchester, the preamble of his patent containing a pompous recital of his public services. The following year he exchanged the Presidency of the Council for the Privy Seal, which he continued to hold till his death. "When Lord Privy Seal," says Fuller, "he brought the Court of Requests into such repute, that what formerly was called the Almes Basket of the Chancery, had in his time well nigh as much *meat* in, and *guests* about it (I mean suits and clients), as the Chancery itself." † "He was," says Lord Clarendon, "a man of great industry and sagacity in business, which he delighted in exceedingly; and preserved so great a vigour of mind, even to his death, that some, who had known him in his younger years, did believe him to have much quicker parts in his age than before."‡ He lived to see the meeting of the Long Parliament; but, on account of his years, and the influence of his son, he escaped the vengeance prepared for other authors of the tyranny inflicted on the nation for eleven years, during which no legislative assembly had been allowed to meet. "He was, unhappily, too much used as a check upon the Lord Coventry; and when

* Clarendon says, "Before the death of King James, by the favour of the Duke of Buckingham he was raised to the place of Lord High Treasurer of England; and within less than a year afterwards, by the withdrawing of that favour, he was reduced to the almost empty title of President of the Council, and, to allay the sense of the dishonour, created Viscount Mandeville. He bore the diminution very well, as he was a wise man, and of an excellent temper." — *Reb.* i. 84.

† Fuller, ii 169.

‡ Rebell. i. 84.

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A.D. 1642.

that Lord perplexed their counsels and designs with inconvenient objections in law, the authority of the Lord Manchester, who had trod the same paths, was still called upon; and he did too frequently gratify their unjustifiable designs and pretences. He died in lucky time," * — on the 10th of November, 1642, in the eightieth year of his age. It must be admitted that he was possessed of very valuable qualities both for public and private life; and when we consider how much he accomplished, and the ways to greatness pursued by most of his contemporaries, the negative praise is creditable to him that he can be charged with no act of violence or corruption. He piqued himself on his consistency, and took for his motto, which is still borne by his descendants, "*Disponendo me, non mutando me.*"

His descendants.

His eldest son, Edward, was one of the most distinguished men who appeared in the most interesting period of our history, having, as Lord Kimbolton, vindicated the liberties of his country in the senate, as Earl of Manchester in the field, and having afterwards mainly contributed to the suppression of anarchy by the restoration of the royal line.†

Charles, the fourth Earl, was created Duke of Manchester by George I.; and William, the fifth Duke, is the present representative of Sir Henry Montagu, the Lord Chief Justice.‡

* Rebell. i. 85.

† He was a *quasi* legal character, and I might almost claim to be his biographer, for he was a Lord Commissioner of the Great Seal under the Commonwealth, and, as Speaker of the House of Lords, conducted their judicial business. He again acted in this capacity at the meeting of the Convention Parliament, till Lord Chancellor Clarendon was sworn in.

Multiplication of the Montagues.

‡ The descendants of the first Chief Justice must now be reckoned by hundreds of thousands. Pepys, in his diary of the 22d of September, 1665, has the following passage: — "Among other discourse concerning long life, Sir John Minnes saying that his great grandfather was alive in Edward the VI.'s time; my Lord Sandwich did tell us how few there have been of his family since King Harry VIII., that is to say, the then Chief Justice, and his son and the Lord Montagu, who was father to Sir Sidney, who was his father. And yet, what is more wonderful, he did assure us from the mouth of my Lord Montagu himself, that in King James's time (when he had a mind to get the King to cut off the entail of some land which was given in Harry VIII.'s time to the family, with the remainder in the crown), he did answer the King in showing how unlikely it was that it ever could revert to the crown, but that it would be a present convenience to him; and did show that at that time there were 4000 persons derived from the very body of the Chief Justice. It seems the number of daughters in the family had been very great, and they too had most of them many children, and grandchildren, and great grandchildren. This he tells as a most known and certain truth."

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Sir James Ley.

We are now in the period of our juridical annals when the office of Chief Justice of the King's Bench was considered a step to political advancement. On the promotion of Chief Justice Montagu to be Lord Treasurer, he was succeeded as Chief Justice by SIR JAMES LEY, who, in his turn, was promoted to be Lord Treasurer. This lawyer, although he filled such high offices, and lived to be an Earl, seems to have owed his elevation mainly to his mediocrity, for he never exhibited much talent either in his profession or in parliament; and, not having committed any considerable crimes, nor conferred any benefits on his generation, he is forgotten in Westminster Hall, and his name is hardly noticed by historians.

His origin and education.

A.D. 1569.

May 1. 1577.

He was descended of an ancient family, long seated at Ley, in the county of Devon; but, being a younger son, he had to fight his way in the world. At the age of sixteen he was sent to Brazen-nose College, Oxford. Having taken a bachelor's degree there, he was transferred to Lincoln's Inn, where he is said to have devoted himself very assiduously to the study of the common law; but he seems to have been more distinguished by agreeable manners than by profound acquirements. After he had been fifteen years at the bar, he had hardly any business; and his prospects were very discouraging. On the accession of James I. he tried the experiment of becoming a Serjeant, — and this likewise failed, for he continued without clients in the Court of Common Pleas, as he had been when sitting in the Court of King's Bench. So hopeless was his condition, that he agreed to accept the appointment of Chief Justice of Ireland, — then pretty much what the office of Chief Justice of New Zealand would now be considered. He continued in exile five years, assisting the King with his new plan of colonising Ulster, and trying to tame the *aborigines*. Being a man of prudence and address, he was very useful in this employment, and greatly recommended himself to his royal master, who expected lasting glory from civilising a country which had become rather more barbarous since a settlement in it had first been attempted by the English. He is one of the "*Worthies*" of LLOYD, who, describing his residence in Ireland,

He goes as Chief Justice to Ireland.

says, "Here he practised the charge King James gave him at his going over — 'not to build his estate upon the ruins of a miserable nation, but, by the impartial execution of justice, to aim at civilising the natives instead of enriching himself.'"

May 15. He returns to England and becomes a favourite with James I.

Ley had at last leave to make a voyage home to his native country, and there he gave such a flattering account of the progress which Ireland was making under the new *régime* — ascribing much of it to himself — that James, as a reward for his eminent services, knighted him, gave him leave to resign his Irish Chief Justiceship, made him Attorney of the Court of Wards and Liveries in England, and, by warrant under the Privy Seal, assigned to him precedence in that court above Sir Henry Hobart, Attorney General to the Crown. His fortune was now made. Till the abolition of military tenure, bringing along with it the custody of the lands of minors, the right of bestowing heiresses in marriage, and other such incidents, the practice in the Court of Wards and Liveries was far more profitable than in any other court; and Sir James Ley not only had a great income with little labour, but he was much at Whitehall, and contrived to accommodate himself to all the humours of the royal pedant. The order of Baronets being established, he was one of the first batch — no doubt buying this distinction at the usual price.

He could not for a moment compare himself with Lord Coke; but when this legal leviathian was pronounced to be a public nuisance, the fashion arose of saying that a man with plain good sense and gentlemanlike habits made the best Chief Justice. Ley's ambition increasing with his wealth, he insinuated that he should make as good a Chief Justice in England as he had done in Ireland; and, without any great stretch, he asserted that he was as much of a lawyer as Montagu, who was now presiding in the King's Bench, more quietly, and more for the support of the prerogative, than Coke, so renowned for his learning. He went so far as to censure Coke for having opposed the King's desire to sit on the bench himself, like Solomon, and to give judgment between his subjects. To add to his legal reputation, he compiled and circulated in MS. "A Treatise concerning Wards

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and Liveries," and "Reports of Cases decided in the Court of Wards and Liveries," which were afterwards printed, and may still be seen in curious collections. Above all, he cultivated Buckingham; and it has been said that he offered the rapacious minister a large sum of money for the Chief Justiceship when it should become vacant: but this statement, I apprehend, proceeded rather from the probability than from any positive evidence of the fact.

Jan. 29. 1621. He is made Chief Justice of the King's Bench.

However the arrangement might have been brought about, when Montagu received the Treasurer's staff, the collar of S.S. was put round the neck of Sir James Ley, as Chief Justice of England. The following is the account we have of his installation, on the 1st day of February, 1621:—"The Lord Chancellor came and sat in the Court of King's Bench, and Sir James Ley came betwixt two of the King's Serjeants to the bar, where the Lord Chancellor made a short speech to him of the King's favour and reasons in electing him to that place; and he, being at the bar, answered thereto, showing his thankfulness, and endeavour in the due execution of his office. He then went into court, and had his patent delivered to him, which was openly read, and was a short recital only that the King had constituted him to be Chief Justice there, commanding him to attend and execute it. He was then sworn." *

The very same day he decided that an innkeeper may be indicted for taking an exorbitant price for oats. Objection was taken that the indictment was bad for not alleging with sufficient certainty what was the reasonable price of oats, for it only alleged "*quod commune pretium avenarum non fuit ultra* 20*d.* the bushel;" but he held the indictment sufficient in averring "*quod predictus A. B. demandavit et cepit pretium excessivum et extorsivum, viz.* 2*s.* 8*d.* a bushel." † A few days after, he ruled that it was actionable for one married woman to say to another married woman, "Thou perjured beast, I will make thee stand upon a scaffold in the Star Chamber," though, for want of the word "art," they were spoken *adjectively*, not *positively*. ‡

* Cro. Jac. 610. † Johnson's case, Cro. Jac. 610.
‡ *Benson et ux* v. *Hall et ux*, Cro. Jac. 613.

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During the two years and a half that he continued to preside in the King's Bench, I do not find any more important point coming before him; and if we may judge from the Reports, the business of his court must have dwindled away almost to nothing, — I presume from an opinion of his incompetency.

He is appointed Speaker of the House of Lords. May 1.

But he was engaged as one of the principal actors in a very solemn proceeding. It has been said that when Lord Bacon pleaded *guilty* to the charge of bribery, alleged against him by the House of Commons, and was deprived of the great seal, Ley for a short time became Lord Chancellor. * In reality he was only appointed Speaker of the House of Lords, the great seal having been put into commission.

He continued to preside on the woolsack while the House of Lords was engaged in some of the most important proceedings which have ever engaged its attention; and although he was not then a peer, and therefore had no right to debate or to vote, — as the organ of the will of the assembly he acted a conspicuous part in the eyes of the public.

He pronounces the sentence against Lord Bacon.

At first it was thought that the painful duty would have been cast upon him of calling upon Lord Bacon to kneel down at the bar, and of addressing him on the enormity of the offence for which he was to receive sentence; but the illustrious convict was, or pretended to be, too ill to attend, and the Peers, to spare the shame of a man whom they all admired for his genius, and even loved for the blandness of his manners, agreed to pass judgment upon him in his absence.

The Lords then sent a message to the other House "that they were ready to give judgment against the Lord Viscount St. Albans if they, with their Speaker, came to demand it." The Commons soon appeared at the bar, with Sir Thomas Richardson (afterwards Chief Justice of the King's Bench) at their head, and "demanded judgment on the Lord Chancellor as the nature of his offences and demerits require." Sir James Ley, remaining covered, thus gave judgment: — "Mr. Speaker: Upon the complaint of the Commons against the Lord Viscount St. Alban, Lord Chancellor, this high Court, on his own confession, hath found him guilty of the

* 2 St. Tr. 1112.

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crimes and corruptions complained of by the Commons, and of sundry other crimes and corruptions of like nature: Therefore this high Court, having first summoned him to attend, and having received his excuse of not attending by reason of infirmities and sickness, which he protested was not feigned, doth nevertheless think fit to proceed to judgment: And therefore this high Court doth adjudge, 1. That the Lord Viscount St. Alban, Lord Chancellor of England, shall undergo fine and ransom of 40,000*l.* 2. That he shall be imprisoned in the Tower during the King's pleasure. 3. That he shall be for ever incapable of holding any office, place, or employment in the state or commonwealth. 4. That he shall never sit in parliament, nor come within the verge of the Court."*

Subsequently, Sir James Ley pronounced judgment on Sir F. Mitchell, found guilty, along with Sir Giles Mompesson, of extortion and oppression under unlawful monopolies obtained from the Crown; and on Sir Henry Yelverton, the Attorney General, found guilty of corruption in preparing charters to pass the great seal. He had a ready eloquence, and on these occasions, where little knowledge of law was required, he appeared to advantage.

Impeachment of Floyde.

In the dispute between the two Houses respecting the punishment of Edward Floyde, he gave important assistance to the Lords in maintaining their exclusive right to try by impeachment. When the unhappy delinquent was at last brought to the bar of the House of Lords, the following dialogue was held, being begun by Lord Speaker Ley: — "What answer do you make to the uttering of the words laid to your charge?" *Floyde:* "I cannot remember that these words were ever spoken by me." *Ley:* "You must give a positive answer whether you spoke the words '*Goodman Palsgrave and Goodwife Palsgrave.*'" *Floyde:* "I spoke not the words in such sense as is alleged." *Ley:* "Did you speak the words, or words to that effect?" *Floyde:* "It would be folly for me to deny them, because they have been proved." The House then agreed to the frightful sentence of repeated scourgings, pillorying, &c., which reflects such

* 1 Parl. Hist. 1249.

indelible disgrace on the House of Lords, but for which Ley cannot be answerable, as he only acted ministerially in pronouncing it. *

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When parliament again met, he ceased to be Speaker, the woolsack being occupied by Williams, Bishop of Lincoln, the new Lord Keeper of the Great Seal.†

The Chief Justice, on his return to his ordinary judicial duties, found them very irksome, and he was impatient to get rid of them. In the end of the year 1624 he succeeded.

He becomes Lord High Treasurer and a Peer.

The intrigue by which he then got possession of the office of Lord Treasurer and was raised to the peerage, will probably remain for ever in obscurity; but the probability is that he paid a large sum of money, to be divided between the King and Buckingham. However this may be, he now joyfully threw off his Judge's robes; he became Lord Ley, Baron Ley, of Ley, in the county of Devon; and, bearing the Treasurer's white wand, he took precedence of all peers, spiritual or temporal, except the Archbishop of Canterbury and the Lord Chancellor. He was at the same time admitted into the cabinet, and he continued in favour during the remainder of the reign of King James.

On the accession of Charles I. he was promoted in the peerage, and took a title which afterwards became one of the most illustrious in the peerage of England, being borne by the hero of Blenheim, Ramillies, and Malplaquet.

The first Earl of Marlborough, though he retained his office of Lord Treasurer for several years, mixed very little in public affairs, and was a mere puppet of the Duke of Buckingham. I cannot find the slightest trace of any speech he ever made in parliament after he was created a peer. He seems still to have had great delight in associating with his old legal friends at the Inns of Court, and we find him carrying his Treasurer's staff at a grand feast given at Serjeants' Inn by his brethren of the coif.‡

By and by it suited the convenience of the favourite that he should be removed from his office of Lord Treasurer§;

* 1 Parl. Hist. 1261. † Ib. 1295. ‡ Cro. Car. ix.

§ Lord Clarendon says, "The Earl of Marlborough was removed under pretence of his age and disability for the work (which had been a better reason against his promotion.)" He observes, "There were at that time five noble

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July 15. 1628. A.D. 1629. He is induced to be President of the Council.

when he was obliged to exchange it for that of President of the Council, which he held till the 14th of March following, when he expired, in the 78th year of his age. The cause of his death is said to have been grief at the quarrel between Charles and the House of Commons after the passing of the PETITION OF RIGHT, which brought on an abrupt dissolution of the Parliament, and a resolution that the government of the country should henceforth be carried on by prerogative alone. In his last moments he was supposed to have had revealed to him the terrible times when Englishmen were to fight against Englishmen in the field, and the scaffold was to be crimsoned with royal gore.

He is said to have been fond of antiquarian learning, and he amused himself with writing treatises on heraldry and other kindred subjects.* Wood describes him as "a person of great gravity, ability, and integrity, and of the same mind in all conditions." This is flattery, — but it is curious to take a glance at one who, in an age of great men, with very slender qualifications, filled the offices of Coke and of Burleigh, and rose to higher rank than either of them. His earldom devolved successively on his two sons, Henry and William, and, on the death of the latter, in 1679, without issue, it became extinct. †

His descendants.

The greatest honour ever conferred upon the house of Ley was by a sonnet addressed by Milton to the Lady Margaret, daughter of the Chief Justice. She resided in a battlemented mansion in Buckinghamshire, bosomed high in tufted trees, where she was "the cynosure of neighbouring eyes." The poet, captivated by her charms,—as yet indifferent about popular

persons alive who had all succeeded one another immediately in that unsteady charge, without any other person intervening: the Earl of Suffolk, the Earl of Manchester, the Earl of Middlesex, the Earl of Marlborough, and the Earl of Portland." — *Rebellion*, i. 74.

* See Hearne's Collection of Curious Discourses (London, 1775, 8vo.); Wood's Ath. Ox.; Bliss. ii. 441.; Dug. Ch. Ser. 105, 106.

† Henry had been called up to the House of Lords in his father's lifetime,— affording the only instance of a Chief Justice and his son sitting together in that assembly. "March 2. 1625.— HODIE Henry Lord Ley (the eldest son of James E. of Marlborough) was brought into the House (in his parliament robes) between the Lord Crumwell and the Lord North (Garter going before), and his Lordship delivered his writ, kneeling, unto the Lord Keeper, which being read, he was brought to his place next to the Lord Deyncourt."—3 *Lords' Journals*, 512.

privileges—and thinking that the surest way to win her was to praise her sire, thus apostrophised her: — CHAP. XI.

Milton's sonnet to his daughter.

"Daughter to that good Earl, once President
Of England's Council and her Treasury,
Who lived in both unstained with gold or fee,
And left them both more in himself content,
'Till sad, the breaking of that Parliament
Broke him, as that dishonest victory
At Chæronœa, fatal to Liberty,
Kill'd with report that old man eloquent!
Though later born than to have known the days
Wherein your father flourish'd, yet by you,
Madam, methinks I see him living yet,
So well your words his noble virtues praise,
That all both judge you to relate them true,
And to possess them, honoured MARGARET!"

Sir Randolf Crewe.

I have very great delight in now presenting to the reader a perfectly competent and thoroughly honest Chief Justice. Considering the times in which he lived, the independent spirit which he displayed is beyond all praise. Since the Judges have been irremovable, they can take part against the abuses of power on very easy terms, and, as Lord Mansfield remarked, "their temptation is all to the side of popularity." Under the Stuarts, a judge gave an opinion against the Crown with the certainty of being dismissed from his office; and, if he retained his virtue, he had this peculiar merit, that he might have sacrificed it without becoming infamous,—for, however profligate, numerous examples would have defended him, and the world would have excused him, saying "he is not worse than his neighbours." The name of RANDOLF* CREWE, therefore, ought to be transmitted with honour to the latest posterity. The more do we owe this debt of gratitude to his memory, that he was not, like Sir Edward Coke, ostentatious and blustering in the discharge of his duty. Not seeking to obtain the applause of the world, he was a quiet, modest, unambitious man, contented with the approbation of his own conscience.

His noble independence of character.

His family.

The subject of this memoir was of an ancient family, who took their name from a manor, in the county of Chester, which had belonged to them at least as far back as the be-

* Christian as well as surnames were, in those days, spelt very differently. We find this name written "Randophe," "Randolph," "Randulph," "Randulf," "Ranulph," "Ranulf," "Randalf," and "Randal."

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ginning of the reign of Edward I. This possession had, for 250 years, belonged to owners of a different name, by the marriage of the heiress into another family, but was repurchased by our Chief Justice, the true heir male of the Crewes.

Born in the year 1588, he was the eldest son of John Crewe, of Nantwich, Esquire, a gentleman in rather reduced circumstances, but animated by a strong desire to restore the greatness of his lineage. There was one other son, Thomas; and their father resolved to breed them to the bar, as affording the best chance of honourably acquiring preferment. They were both lads of excellent parts, and he used to entertain them with stories of the greatness of their ancestors: he would point out to them the great manor of CREWE, forming a large section of the county; and he fired their imaginations with the vision of their recovering it, and again becoming "Crewes of that ilk." In the reign of Edward III. two brothers, of the name of Stratford, successively held the office of Lord Chancellor; and in recent times the two brothers Scott rose in the law to equal eminence. The two Crewes afford another instance of similar success. They were at the same school, the same college, and the same inn of court; always equally remarkable for steady application, sound judgment, and honourable conduct. They both followed exactly the same course till they were Serjeants-at-law, were knighted, and were successively Speakers of the House of Commons,—when fate varied their destiny.* Sir Thomas never having been a Chief Justice, I must confine my narrative to Sir Randolf.

He studies at Lincoln's Inn. A.D. 1602.

We have to boast of him as one of the ornaments of Lincoln's Inn; and in our books are the following entries respecting him, marking the several stages of his career there:—

"Cestr. Radulphus Crewe admiss. est in societate ibm decimo tertio die Novembris anno regni Reginæ Elizabeth decimo nono ad instanc Richi Wilbraham et Lawrencij Woodnett manuc—

"Octo die Novembris Anno regni Elizabethe vicesimo sexto

"It is orderede that theise gentlemen hereafter namede shalbe called to the utter barre, vid. Mr. Jones and Mr. Sidleye and they

* The son of Sir Thomas, soon after the Restoration, was created by Charles II., Baron Crewe of Stene in the county of Northampton; but this peerage became extinct in 1721, by the death without issue of his two sons, who had successively inherited it.

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to be called at the nexte moote in the hall the savinge of auncientye of Mr. Jonnes and Mr. Sidleye to the utter barrestors that have not mooted. And Mr. Mollton and Mr. CREWE to be called to the barre the firste moote the nexte terme."

"Lyncolnes Inne. Ad Consilium ibm tent tertio die Novembris anno Rmae Eliz.: et quadragessimo sedo. 1600.

"Yt ys ordered that Mr. Edward Skepwyth Mr. James Leighe and Mr. RANDOPHE CREWE shalbe called to the Benche and be published at the next pleading of the next whole Moote in the Hall.

"Lincolnes Inne. Ad Consilium ibm tent nono die Maij anno r. Rmae Dnæ Elizabethe z xliiij^to 1602.

"Att this Counsell Mr. RANDOLPHE CREWE is elected and chosen to be reader the next somer and is to have such allowances as the last somer reader hadd, and Mr. Gellybrand and Mr. Christopher are elected to be Stewardes of the Reader's Dynner."

His skill in heraldry and genealogy.

He made himself a deep black-letter lawyer; and, from early training, he was particularly fond of genealogy and heraldry. He had likewise a ready elocution, and he conducted with discretion and success the causes intrusted to him. Business flowed in upon him almost from his call to the bar; and, never forgetting that he might be reinstated in the family possessions, he saved every broad piece that he could lay by without being mean.

When, in the hope of obtaining a supply, a parliament was called in the spring of 1614, he had acquired such distinction that, without solicitation, he was returned to the House of Commons as member for his native county; and at the opening of the session he was elected Speaker. He "disqualified" himself in the approved fashion; but, being "allowed" by the King, with high commendation for his known learning and ability,—in demanding the privileges of the Commons he delivered a flowery address to the King, in which he contrived to allude to his Majesty's descent from Cerdic the Saxon, as well as William the Conqueror and the Scottish monarchs, whom he carried back nearly to the Flood. James, much tickled with this pedigree, again expressed his satisfaction that the Commons had made so worthy a choice; but strictly commanded the new Speaker to prevent

April 7. 1614. He is elected Speaker of the House of Commons.

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the introduction of improper bills into the House, or the use of improper topics in debate, and to urge the Commons with all speed to vote the supply of which he stood so much in need.

A.D. 1614.

Crewe had a very unhappy time of it while in the chair of the House of Commons, and conceived a disgust for politics which lasted as long as he lived. Instead of granting a supply, the leaders of the country party, now grown strong and bold, talked of nothing but grievances; and a quarrel arose between the two Houses respecting a speech made by the Bishop of Lincoln, derogatory to the dignity of the Commons. The King blamed the Speaker; but the Speaker declared that he could do nothing more to further the King's business without trenching on those privileges which it was his duty to uphold. At the end of a few weeks, employed in useless altercation, the King abruptly put an end to the session by a dissolution.*

July 1. 1614.

The ex-Speaker now resolved to devote himself exclusively to his profession, and with this view he took upon himself the degree of Sergeant-at-law.†

He refused to accept a seat in the next parliament, which, meeting in Jan. 1621, distinguished itself by the punishment of Lord Bacon;—and he does not appear to have been again in any way brought before the public till Sir James Ley's resignation of the office of Chief Justice of the King's Bench when made Lord Treasurer.

He is appointed Chief Justice of the King's Bench.

Two Chief Justices having presided in succession who were politicians rather than lawyers, there was a cry that "Bishop Williams, the Chancellor, wished to have the common law judges as incompetent as himself." In deference to the public voice, which even in absolute governments is not to be despised, the resolution was taken to select a good lawyer for the vacancy, and every one pointed to Serjeant Randolf Crewe as the fittest man that the profession afforded. Accordingly, on the 26th of January 1625, he took his seat as Chief Justice of the Court of King's Bench.

Jan. 26. 1625.

There never was a more laudable appointment, and he even

* 1 Parl. Hist. 1149—1169. † Dug. Chr. Ser. 105.

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A.D. 1625.

exceeded the sanguine expectations that had been entertained of his fitness. To learning hardly inferior to that of Coke, and to equal independence of mind, he added — what Coke wanted so much — patience in hearing, evenness of temper, and kindness of heart.

On the demise of the Crown, he was immediately reappointed to his office, and he continued to fill it with increasing reputation till the unfortunate Charles began that course of illegal and unconstitutional measures which ended so tragically.

"CRO. JAC.," "CRO. CAR.," and the other Reports of that time, swarm with decisions of Lord Chief Justice Crewe; but they have almost all become obsolete, with the laws on which they were founded. There is one of his recorded judgments, however, which, as a true specimen of English eloquence in the 17th century, will continue to be read and recited as long as we are a nation.

His famous speech in the Oxford Peerage Case.

A contest arose in the year 1626, in consequence of the death of Henry de Vere, Earl of Oxford, respecting the right to that earldom, between Robert de Vere, claiming as heir male of the family, and Lord Willoughby de Eresby, claiming through a female, as heir general to the last earl. The case was referred by Charles I. to the House of Peers, who called the Judges to their assistance. The opinion of these venerable sages was delivered in the following terms by Lord Chief Justice Crewe: —

"This great and weighty cause, incomparable to any other of the sort that hath happened at any time, requires much deliberation and solid and mature judgment to determine it. Here is represented to your Lordships *certamen honoris*, illustrious honour. I heard a great peer of this realm and a learned say when he lived, 'there is no King in Christendom hath such a subject as Oxford.' And well might this be said, for DE VERE came in with the Conqueror, being then Earl of Guynes; shortly after the Conquest, he was made Great Chamberlain by Henry I. the Conqueror's son, above 500 years ago. By Maud the Empress, he was created Earl of Oxford, the grant being ALBERICO COMITI, so that he was clearly an Earl before. He was confirmed and approved by Henry Fitz-Empress, Henry II. This great honour, this high and noble dignity, hath continued ever since in the remarkable surname of DE VERE, by so many ages, descents,

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A.D. 1626.

and generations, as no other kingdom can produce such a peer in one and the self-same name and title. I find in all this time but two attainders of this noble family, and those in stormy times, when the government was unsettled and the kingdom in competition.

"I have laboured to make a covenant with myself, that affection may not press upon judgment; for I suppose there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of a house so illustrious, and would take hold of a twig or twine thread to uphold it. And yet time hath his revolutions; there must be a period and an end to all temporal things — *finis rerum* — an end of names and dignities, and whatsoever is terrene; — and why not of DE VERE? — for where is BOHUN? Where is MOWBRAY? Where is MORTIMER? Nay, which is more, and most of all, where is PLANTAGENET? They are entombed in the urns and sepulchres of mortality! Yet let the name of DE VERE stand so long as it pleaseth God."

He then went on to show, that although the earldom was at first held in fee-simple by the family of DE VERE, so that it might descend to a female, nevertheless it was entailed on *Aubrey de Vere* "*and his heirs male*" by the parliament of 16 Richard II., so that the right had descended to *Robert de Vere* as his heir male, and the *De Veres* as long as the line continued must be Earls of Oxford. The Lords were guided by this opinion*, but the successful claimant died without an heir male; and DE VERE, along with BOHUN, MOWBRAY, MORTIMER, and PLANTAGENET, was "entombed in the urns and sepulchres of mortality."†

He is displaced for his honesty.

Before Sir Randolf Crewe had completed the second year of his Chief Justiceship, although reverenced by the people, he was found wholly unfit for the system of government which had been determined upon by the King and his ministers. After the abrupt dissolution of Charles's second parliament without the grant of a supply, all redress of grievances being refused, — the plan was deliberately formed of discontinuing entirely the use of popular assemblies in England, and of ruling merely by prerogative. For this purpose it was indispensably necessary that the King should have the power of imposing taxes, and the power of arbitrary

* Cruise on Dignities, p. 101.

† The title was renewed by Queen Anne in favour of Harley, descended from the De Veres through a female.

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imprisonment. He began to exercise both these powers by assessing sums which all persons of substance were called upon to contribute to the revenue according to their supposed ability, and by issuing warrants for committing to gaol those who resisted the demand. But these measures could not be rendered effectual without the aid of the Judges; for hitherto in England the validity of any fiscal imposition might be contested in a court of justice; and any man deprived of his liberty, might, by suing out a writ of *habeas corpus*, have a deliberate judgment upon the question "whether he was lawfully detained in custody or not?" Sir Thomas Darnel, Sir Edmund Hampden, and other public-spirited men, having peremptorily refused to pay the sums assessed upon them, had been cast into prison, and were about to seek legal redress for their wrongs.

In the coming legal contest, almost every thing would depend upon the Chief Justice of the King's Bench. According to a well-known fashion which prevailed in those times, the Attorney General, by order of the Government, sounded Sir Randolf Crewe respecting his opinions on the agitated points, and was shocked to hear a positive declaration from him that, by the law of England, no tax or talliage, under whatever name or disguise, can be laid upon the people without the authority of parliament, and that the King can not imprison any of his subjects without a warrant specifying the offence with which they are charged. This being reported to the Cabinet, Sir Randolf Crewe was immediately dismissed from his office; and, in a few weeks after, Sir Nicholas Hyde, who was expected to be more compliant, was made Chief Justice in his stead.

Nov. 10.

When he gave his answer to the Attorney General, he was not ignorant of the punishment which he must incur, and he bore it with perfect equanimity,—rejoicing that he had done his duty, and that he was delivered from temptation.

It has often been said that he was removed for opposing ship-money; but this ingenious tax had not then been devised, and, indeed, Noy, its author, was still a patriot, and one of the counsel for those who denied the legality of the present imposition. There having been no proceeding in

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court in which he had expressed any opinion against the prerogative, and his private conference with the Attorney General being then unknown, his dismissal seems to have caused great astonishment. Croke, the reporter, thus notices it: —

"Mem. Upon Friday, the 10th of November, Sir Randolf Crewe, Chief Justice of the King's Bench, was discharged of that place, by writ under the great seal, for some cause of displeasure conceived against him; but for what was not generally known." *

Fuller, writing when the truth had been partly disclosed, says, in his quaint style, —

"King Charles' occasions calling for speedy supplies of money, some great ones adjudged it unsafe to venture on a parliament, for fear, in those distempered times, the physic would side with the disease, and put the King to furnish his necessities by way of loan. Sir Randal, being demanded his judgment of the design, and the consequences thereof (the imprisoning of recusants to pay it), openly manifested his dislike of such preter-legal courses, and thereupon, Nov. 9. A.D. 1626, was commanded to forbear his sitting in the court, and the next day was by writ discharged from his office; whereat he discovered no more discontentment than the weary travailer is offended when told that he is arrived at his journey's end."

He had it in his power to be returned member for his native county, in the parliament which met soon after, and the opposition might have been led by two ex-Chief Justices of the King's Bench; but he had neither the vigour nor the thirst for vengeance which animated Sir Edward Coke, and he preferred the repose of private life, — not being without hope of being restored to his judicial functions.

At the end of two years he wrote the following letter to Buckingham, which is, I think, most creditable to him; for, notwithstanding his earnest desire to be replaced on the bench, he makes no concession or promise at all inconsistent with his principles: —

His letter to Buckingham after his removal.

"My duty most humbly done to your grace, vouchsafe, I beseech your grace, to read the *misfortune* of a poor man herein, and take them into your noble thoughts, whose case is considerable. I have lived almost two years under the burden of his Majesty's heavy displeasure, deprived of the place I held, and laid aside as a

* Cro. Car. p. 52.

person not thought of, and unserviceable, whereof I have been soe sensible, that ever since living at my house att Westminster, I have not sett my foot into any other house there or at London (saveing the house of God), but have lived private and retired as it best became me.

"I did decline to be of this late Parliament, distrusting I might have been called upon to have discovered in the public, the passages concerning my removal from my place which I was willing should be lapped up in my own busome.

"I likewise took special care if my name were touchit upon in the Comons house, that some of my friends there should doe their best to divert any further speech of me, for I alwaies resolved wholly to relie upon the King's goodness, who I did not doubt would take me into his princely thoughts, if your grace vouchsafed to intercede for me. The end of the Parliament was the time when I prefixed myself to be a suitor to your grace, and I have now encouragement soe to be: the petition of right whereunto your grace was a party speaks for me, and for the right of my place, but I humbly desire favour. God doth knowe, it was a great affliction to me to deny anything commanded me, the King that my heart soe loved, and to whom I been soe bound, prince and King: but had I done it, I had done contrary to that which all his judges resolved to doe (and I only suffer), and if I had done it and they had deserted me therein, I had become a scorne to men, and had been fitt to have lived like a scritch owl in the darke; so likewise if I had done it and had been knowne to have been the leader herein, and the rest of the judges had been pressed to have done the like, the blame and the reproof would have been laid on me, and by me they might in some measure have excused themselves. But yet there was a greater obligation to restrain me than these (for these be but morall reasons), and that was the obligation of an oath, and of a conscience, against both which (then holding the place of a judge), I in my own understanding had done, had I subscribed my name to the writing which the King was then advised to require me to doe, for therein I had approved the commission, and consequently the proceedings thereupon, wherein here I had been condemned, and with how loud and shrill a voice, I leave to your grace to judge. Wherefore, most noble Lord, vouchsafe to weigh these my reasons in the ballance of your wisdom and judgement, and be soe noble and just as to excuse me to the King herein, and in a true contemplation of that noblenesse and justice, be soe good as to be the means, that I

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A.D. 1628.

may be really restored to the King's grace and favour. Your grace has in your hands Achilles' speare which hurts and heales. I am grievously hurt, your grace hath the means to heale me to whom I make my address. The time is now fitt for me: now you are upon a forraigne expedition, you take my prayers, my wife's, and my children's with you, and I hope your journey will be the more prosperous.

"I am now in the seventieth year of my age; it is the general period of man's life, and my glass runs on apace. Well was it with me when I was King's serjeant, I found profitt by it: I have lost the title and place of Chiefe Justice. I am now neither the one or other; the latter makes me uncapable of the former, and since I left the Chiefe's place, my losse has been little less than 3000*l.* already.

"I was by your favour in the way to have raised and renewed in some measure my poore name and familey, which I will be bold to say hath heretofore been in the best ranke of the famileys of my countrey, till by a general heir the patrimony was carried from the male line into another sirname, and since which time it hath been in a weak condition. Your grace may be the means to repair the breach made in my poor fortune, if God soe please to move you, and you will lose no honour by it. Howsoever I have made my suit to your noblenesse, and your conscience, for I appeal to both, and whatsoever my success be, I shall still appear to be a silent and patient man, and humbly submitt myself to the will of God and the King. God be with your grace, He guide and direct you, and to his holy protection I committ you, resting ever

"A most humble servant to your grace,

"RANDULPH CREWE.

"Westminster, 28th Junii."

On a copy of this letter, preserved among the family papers at Crewe, there is the following memorandum in the handwriting of the Chief Justice:—"A little before the D. going to the Isle of Ree, he told Sir Randal, in the presence of Lord Treasurer Weston and Sir Robt. Pye, that he would at his return right him in the King's favour, for it was he that had injured him, and therefore was bound in honour to do it." However friendly the Duke's intentions might have been, the arm of Felton, within a month from the time when this remonstrance was delivered to him, for ever prevented him from carrying them into execution.

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His mode of life in retirement.

The ex-Chief Justice then renounced all thoughts of public employment, and spent the rest of his long life rationally and happily in rural amusements, in literary pursuits, and in social enjoyments. It happened soon after that the manor of Crewe was in the market for sale. Either of the two brothers had the means of purchasing it; but the preference was given to Sir Randolf the elder; and he was more gratified, when he took possession of it and became "Crewe of that ilk," than if he had been installed as Chancellor in the marble chair, — saying "How delighted my poor dear father would be if he could look down and see his fond wish accomplished!" Here he built a magnificent new manor-house, which was admired and copied by the men of Cheshire. Fuller says, "He first brought the model of excellent building into these remote parts; yea, brought London into Cheshire, in the loftiness, sightliness, and pleasantness of their structures."

A.D. 1641.

He lived on till the Long Parliament had sat several years, and he might actually have been present in the House of Commons in 1641, when Mr. Hollis, inveighing against the corrupt Judges who had decided in favour of ship-money, drew this contrast between them and a Judge who had acted well: —

Jan. 20.

Hollis's panegyric upon him in the Long Parliament.

"What honour is he worthy of, who, merely for the public good, hath suffered himself to be divested and deprived of what he highly values? — such a judge as would lose his place, rather than to do that which his conscience told him was prejudicial to the commonwealth?—and this did that worthy reverend judge, the Chief Justice of England, Sir Randulf Crewe. Because he would not, by subscribing, countenance the loan in the first year of the King, contrary to his oath and conscience, he drew upon himself the displeasure of some great persons about his Majesty, who put on that project which was afterwards condemned by the Petition of Right as unjust and unlawful; and by that means he lost his place of Chief Justice of the King's Bench; and hath, these fourteen years, by keeping his innocency, lost the profit of that office which, upon a just calculation in so long a revolution of time, amounts to 26,000*l.* or thereabout. He kept his innocency when others let theirs go; when himself and the commonwealth were alike deserted; which raises his merit to a higher pitch. For to be honest when everybody else is honest, when honesty is in

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A.D. 1641.

fashion and is *trump*, as I may say, is nothing so meritorious; but to stand alone in the breach — to own honesty when others dare not do it, cannot be sufficiently applauded, nor sufficiently rewarded. And that did this good old man do; in a time of general desertion, he preserved himself pure and untainted. 'Temporibusque malis ausus est esse bonus.'" *

July 7. Hollis afterwards succeeded in carrying an address to the King, praying "that his Majesty would bestow such an honour on his former Judge, Sir Randolf Crewe, Knt., late Lord Chief Justice of England, as may be a noble mark of sovereign grace and favour, to remain to him and his posterity, and may be in some measure a proportionable compensation for the great loss which he hath, with so much patience and resolution, sustained." Nothing was done for him before the civil war broke out; but he had that highest reward, the good opinion of his fellow citizens. He seems to have enjoyed the sympathy and respect of all honest men from the time of his dismissal from office. Fuller says quaintly, "The country hath constantly a smile for him for whom the court hath a frown. This knight was out of office, not out of honor, — living long after at his house in Westminster, much praised for his hospitality." He adds, "I saw this worthy Judge in 1642, but he survived not long after."†

The respect entertained for him.

His death. His last days were disturbed by the clash of arms. The struggle between the parties which, in his youth, had been carried on in St. Stephen's Chapel, and in Westminster Hall, was now transferred to Edgehill and Marston Moor. We are not informed to which side he inclined, but the probability is, that, being a steady friend of constitutional monarchy, he dreaded the triumph of either, and that, like the virtuous Falkland, he exclaimed with a sigh, PEACE! PEACE! He languished till the 13th of Jan., 1646, when he expired in the eighty-seventh year of his age, — leaving Cromwell to wield the sceptre which he had seen in the hand of Queen Elizabeth. He was buried in the family cemetery at Crewe. All lawyers are familiar with his singularly shrewd physiognomy, from an admirable print of him in Dugdale's ORIGINES JURIDICIALES.

* 3 St. Tr. 1298. † Worthies, vol. ii.

His male descendants remained "Crewes of that ilk." for several generations. The estate then came to an heiress, who married John Offley, Esq., of Madely, in the county of Stafford. Their son, on succeeding to it, took, by act of parliament, the name and arms of Crewe. His grandson was raised to the peerage by King George III., being created Baron Crewe, of Crewe, in the county of Chester; and the Chief Justice is represented by Richard, the third Lord Crewe.

His descendants. Feb. 25. 1806.

We must now go back to SIR NICHOLAS HYDE, elevated to the bench that he might remand to prison Sir Thomas Darnel and the patriots who resisted the illegal tax imposed under the name of "loan," in the commencement of the reign of Charles I. He was the uncle of the great Lord Clarendon. They were sprung from the ancient family of "*Hyde of that ilk*" in the county palatine of Chester; and their branch of it had migrated, in the 16th century, into the west of England. The Chief Justice was the fourth son of Lawrence Hyde, of Gussage St. Michael, in the county of Dorset.

Sir Nicholas Hyde.

Before being selected as a fit tool of an arbitrary government, he had held no office whatever; but he had gained the reputation of a sound lawyer, and he was a man of unexceptionable character in private life. He was known to be always a staunch stickler for prerogative, but this was supposed to arise rather from the sincere opinion he formed of what the English constitution was, or ought to be, than from a desire to recommend himself for promotion. He is thus goodnaturedly introduced by Rushworth: —

His reputation as a lawyer.

A.D. 1626.

"Sir Randolf Crewe, showing no zeal for the advancement of the loan, was removed from his place of Lord Chief Justice, and Sir Nicholas Hyde succeeded in his room: — a person who, for his parts and abilities, was thought worthy of that preferment; yet, nevertheless, came to the same with a prejudice, — coming in the place of one so well-beloved, and so suddenly removed."*

Whether he was actuated by mistaken principle or by profligate ambition, he fully justified the confidence reposed in him by his employers. Soon after he took his seat in the

His conduct as Chief Justice of the King's Bench.

* 1 Rushw. 420.

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A.D. 1627.

Court of King's Bench, Sir Thomas Darnel, and several others committed under the same circumstances, were brought up before him on a writ of *habeas corpus;* and the question arose whether the King of England, by *lettre de cachet,* had the power of perpetual imprisonment without assigning any cause? The return of the gaoler, being read, was found to set out, as the only reason for Sir Thomas Darnel's detention, a warrant, signed by two privy councillors, in these words:

Sir Thomas Darnel's Case.

"Whereas, heretofore, the body of Sir Thomas Darnel hath been committed to your custody, these are to require you still to detain him, and to let you know that he was and is committed BY THE SPECIAL COMMAND OF HIS MAJESTY."

Lord Chief Justice Hyde proceeded, with great temper and seeming respect for the law, observing, "Whether the commitment be by the King or others, this Court is a place where the King doth sit in person, and we have power to examine it; and if any man hath injury or wrong by his imprisonment, we have power to deliver and discharge him; if otherwise, he is to be remanded by us to prison again."

Selden, Noy, and the other counsel for the prisoners, encouraged by this intimation, argued boldly that the warrant was bad on the face of it, *per speciale mandatum Domini Regis* being too general, without specifying an offence for which a person was liable to be detained without bail; that the warrant should not only state the authority to imprison, but the cause of the imprisonment; and that if this return were held good, there would be a power of shutting up, till a liberation by death, any subject of the King without trial and without accusation. After going over all the common law cases and the acts of parliament upon the subject, from MAGNA CHARTA downwards, they concluded with the *dictum* of Paul the Apostle, "It is against reason to send a man to prison without showing a cause."

Hyde, C. J.: "This is a case of very great weight and great expectation. I am sure you look for justice from hence, and God forbid we should sit here but to do justice to all men, according to our best skill and knowledge; for it is our oaths and duties so to do. We are sworn to maintain all prerogatives of the King; that is one branch of our oath, — but there is another — to administer justice equally to all people. That which is now to be

judged by us is this: 'Whether, where one is committed by the King's authority, and by cause declared of his commitment, we ought to deliver him by bail, or to remand him?'"

From such a fair beginning there must have been a general anticipation of a just judgment; but, alas! his Lordship, without combating the arguments, statutes, or texts of Scripture relied upon, said "the Court must be governed by precedents," and then, going over all the precedents which had been cited, he declared that there was not one where, there being a warrant *per speciale mandatum Domini Regis*, the judges had interfered and held it insufficient. He said he had found a resolution of all the judges in the reign of Queen Elizabeth, that if a man be committed by the commandment of the King, he is not to be delivered by a *habeas corpus* in this court, "for we know not the cause of the commitment." Thus he concluded: —

"What can we do but walk in the steps of our forefathers? Mr. Attorney hath told you the King has done it for cause sufficient, and we trust him in great matters. He is bound by law, and he bids us proceed by law; we are sworn so to do, and so is the King. We make no doubt the King, he knowing the cause why you are imprisoned, will have mercy. On these grounds we cannot deliver you, but you must be remanded." *

This judgment was violently attacked in both Houses of Parliament. In the House of Lords the Judges were summoned, and required to give their reasons for it. Sir Nicholas Hyde endeavoured to excuse himself and his brethren from this task by representing it as a thing they ought not to do without warrant from the King. Lord Say observed, "If the Judges will not declare themselves, we must take into consideration the point of our privilege." To soothe the dangerous spirit which disclosed itself, Buckingham obtained leave from the King that the Judges should give their reasons, and Sir Nicholas Hyde again went over all the authorities which had been cited in the King's Bench in support of the prerogative. These were not considered by any means satisfactory; but, as the Chief Justice could no longer be deemed contumacious, he escaped the commitment with which

* 3 St. Tr. 1.

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A.D. 1628.

he had been threatened. Sir Edward Coke, and the patriots in the House of Commons, were not so easily appeased, and they for some time threatened Lord Chief Justice Hyde and his brethren with an impeachment; but it was hoped that all danger to liberty would be effectually guarded against for the future by compelling the reluctant King to agree to the PETITION OF RIGHT. Before Charles would give the royal assent to it,—meaning not to be bound by it himself, but afraid that the Judges would afterwards put limits to his power of arbitrary imprisonment,—he sent for Chief Justice Hyde and Chief Justice Richardson to Whitehall, and directed them to return to him the answer of themselves and their brethren to this question, "Whether in no case whatsoever the King may commit a subject without showing cause?" The answer shows that they had been daunted by the denunciations of Sir Edward Coke, and that they were driven to equivocate: "We are of opinion that, by the general rule of law, the cause of commitment by his Majesty ought to be shown; yet some cases may require such secresy that the King may commit a subject without showing the cause, for a convenient time." Charles then delivered to them a second question, and desired them to keep it very secret, "Whether, if to a *habeas corpus* there be returned a warrant from the King without any special cause, the Judges ought to liberate him before they understand from the King what the cause is?" They answered, "If no cause be assigned in the warrant, the party ought, by the general rule of law, to be liberated: but, if the case requireth secresy, and may not presently be disclosed, the Court, in its discretion, may forbear to liberate the prisoner for a convenient time, till they are advertised of the truth thereof." He then came to the point with his third question, "Whether, if the King grant the Commons' PETITION, he doth not thereby exclude himself from committing or restraining a subject without showing a cause?" Hyde reported this response, "Every law, after it is made, hath its exposition, which is to be left to the courts of justice to determine; and, although the PETITION be granted, there is no fear of conclusion as is intimated in the question."*

* Hargrave MS. xxxii. 97.

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The Judges having thus pledged themselves to repeal the act for him by misconstruing it, he allowed it to be added to the statute book. No sooner was the parliament that passed it abruptly dissolved than it was flagrantly violated, and Selden, Sir John Eliot, and other members of the House of Commons, were arrested for the speeches they had delivered, and for requiring the Speaker to put from the chair a motion which had been made and seconded. This proceeding was more alarming to public liberty than any thing that had been before attempted by the Crown: if it succeeded, there was no longer the hope of any redress in parliament for the corrupt decisions of the common law courts.

A.D. 1628. Prosecution against Sir John Eliot and others.

To make all sure by an extra-judicial opinion, Lord Chief Justice Hyde and the other Judges were assembled at Serjeants' Inn, and, by the King's command, certain questions were put to them by the Attorney General. The answers to these, given by the mouth of the Chief Justice, if acted upon would for ever have extinguished the privileges and the independence of the House of Commons:—"That a parliament man committing an offence against the King in parliament, not in a parliamentary course, may be punished after the parliament is ended; for, though regularly he cannot be compelled out of parliament to answer things done in parliament in a parliamentary course, it is otherwise where things are done exorbitantly:" and, "That by false slanders to bring the Lords of the Council and the Judges, not in a parliamentary way, into the hatred of the people, and the Government into contempt, was punishable, out of parliament, in the Star Chamber, as an offence committed in parliament beyond the office, and besides the duty, of a parliament man."

Opinions of Chief Justice Hyde on the privileges of the House of Commons.

The parties committed were brought up by *habeas corpus*, and, the public being much scandalised, an offer was made that they might be bailed; but, they refusing to give bail, which they said would be compromising the privileges of the House of Commons, Lord Chief Justice Hyde remanded them to gaol.

The Attorney General having then filed an ex-officio information against them for their misconduct in parliament, they pleaded to the jurisdiction of the Court "because these

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offences, being supposed to be done in parliament, ought not to be punished in this court, or elsewhere than in parliament."

Chief Justice Hyde tried at once to put an end to the case by saying that "all the Judges had already resolved with one voice, that an offence committed in parliament, criminally or contemptuously, the parliament being ended, rests punishable in the Court of King's Bench, in which the King by intendment sitteth."

The counsel for the defendants, however, would be heard, and were heard in vain; for Chief Justice Hyde treated their arguments with scorn, and concluded by observing, "As to what was said, that 'an inferior court cannot meddle with matters done in a superior,' true it is that an inferior court cannot meddle with the *judgments* of a superior court; but if particular members of a superior court offend, they are oftimes punishable in an inferior court,—as if a judge shall commit a capital offence in this court, he may be arraigned thereof at Newgate. The behaviour of parliament men ought to be parliamentary. Parliament is a higher court than this, but every member of parliament is not a court, and if he commit an offence we may punish him. The information charges that the defendants acted *unlawfully*, and they could have no privilege to violate the law. No outrageous speeches have been made against a great minister of state in parliament that have not been punished."—The plea being overruled, the defendants were sentenced to be imprisoned during the King's pleasure, and to be fined, Sir John Eliot in 2000*l.* and the others in smaller sums.

This judgment was severely condemned by the House of Commons at the meeting of the Long Parliament, and was afterwards reversed, on a writ of error, by the House of Lords.*

His death.

But Lord Chief Justice Hyde escaped the fate of his predecessor, Chief Justice Tresilian, who was hanged for promulgating similar doctrines, for he was carried off by disease when he had disgraced his office four years and nine months. He died at his house in Hampshire, on the 25th of August, 1631.

* 3 St. Tr. 235—395.

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One is astonished to find judges in the seventeenth century so setting law and decency at defiance, when Sir Edward Coke, and those who had carried the PETITION OF RIGHT, were still alive: but it was well understood that parliaments were never to meet again; and, if it had not been for Charles's folly in embroiling himself with the Scottish nation about episcopacy, he and his descendants might long have enjoyed absolute power, although, no doubt, in course of time, the violence of popular discontent, and the weakness of a despotic government, would at last have brought about a sudden and dreadful convulsion, such as those which we now see raging in the Continental states.

In justice to the memory of Sir Nicholas Hyde, I ought to mention that he was much respected and lauded by true courtiers. Sir George Croke describes him as "a grave, religious, discreet man, and of great learning and piety."* Oldmixon pronounces him to have been "a very worthy magistrate;" and highly applauds his judgment in favour of the power of the Crown to imprison and prosecute parliament men for what they have done in the House of Commons.

Sir Thomas Richardson.

Hyde was succeeded by a man who was still more pliant, but who was ever eager to combine popularity with Court favour. This was SIR THOMAS RICHARDSON, son of Dr. Thomas Richardson, of Hardwicke, in the county of Suffolk. Here he was born on the 3d of July, 1569. I find no account of his education till he was sent to study law in Lincoln's Inn. He was very diligent in his profession, and, while yet young at the bar, he was elected Recorder of Bury St. Edmund's, and of Norwich; and he obtained the appointment

* Cro. Car. 225.—He was censured for having favourites at the bar; but the extent to which this sort of favouritism was then carried may be judged by what Roger North says of it, and what he considers its legitimate limits:—"When the Lord Chief Justice Hyde was alive, he usually went the Norfolk circuit; and this judge was industriously favourable to his Lordship, calling him *cousin* in open court, which was a declaration that he would take it for a respect to himself to bring him causes: and that is the best account that can be given of a favourite; in which capacity a gentleman pretends to be easily heard, and that his errors and lapses, when they happen, may not offend the judge or hurt a cause,—beyond which the profession of favour is censurable both in judge and counsel." — *Life of Guilford*, i. 82.

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His legal promotions.

He is compelled to serve the office of Speaker of the House of Commons.

of Attorney General to Queen Anne, the consort of James I. Soon afterwards he took upon himself the degree of Serjeant-at-law. In the parliament which met on the 30th of January, 1621, he was returned to the House of Commons as member for St. Alban's, not intending that his parliamentary duties should at all interfere with his profession, to which he was much devoted. But on the first day of the session, to his great surprise and mortification, he was elected Speaker. He *disqualified* himself not only according to ancient precedent, but *bonâ fide*,—and earnestly implored that the House would excuse him and proceed to a new choice. "Seeing that no excuse would serve the turn, he wept downright."* Unfortunately, no account is preserved of his oration before the King the following day, when he was presented for confirmation at the bar of the House of Lords.

March 25. 1621.

He must have belonged to the popular party, who at last, constituted the majority in the Lower House, and were thoroughly determined to punish corruption and to reform abuses. Out of respect to his office, he was knighted on his first appearance at Whitehall as Speaker. He had much more laborious duties to perform in his new office than any of his predecessors. In early times, the session of parliament did not last longer than a few days; and recently it was terminated in a few weeks, — either amicably, the required supply being granted,—or, upon an obstinate inquiry into grievances, by an abrupt dissolution. The present session, with an interval of an adjournment, continued a whole year; and Serjeant Richardson's practice at the bar, during this long period, must have been seriously interfered with, although it was not considered incorrect that he should sit in the chair of the House of Commons in the morning, and consult with his clients at his chambers in the evening; and he was allowed to plead before the Judges of the Court of Common Pleas on the days when the House did not meet.

He rendered good service in advising the proceedings upon the impeachments carried on before the Lords against Lord Chancellor Bacon, Sir Giles Mompesson, and Sir Henry Yelverton; but he betrayed the Commons into a very serious

* 4 Nich. Proc. James I., p. 651.; 1 Parl. Hist. 1168.

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embarrassment, by persuading them that they had power to adjudge as well as to accuse wherever any offence was committed against the state. Edward Floyde, a gentleman of family and fortune, having, after the taking of Prague, talked contemptuously of the King and Queen of Bohemia, then very popular, as "Goodman Palsgrave and Goodwife Palsgrave," was impeached as an enemy to the Protestant religion. He was accordingly arrested by order of the House of Commons; and the Speaker gave it as his clear opinion, that the Commons have power to hear and to determine as well as to accuse, where they deem it for the public good to exercise such a jurisdiction. Accordingly, Floyde was brought to the bar of the House, and, offering no sufficient defence, Mr. Speaker, after reciting the horrid words that he had spoken, thus proceeded: —

A. D. 1621. The part he took in the prosecution of Floyde.

"It further appeareth that these words were spoken by you in a most despiteful and scornful manner, with a fleering and scoffing countenance, on purpose to disgrace as much as in you lay these illustrious and pious princes: whereupon, the Commons in parliament assembled, of their love and zeal to our sovereign lord the King, and not minding to let pass unpunished these things that tend to the disgrace of his Majesty's issue, a part of himself, who is head of the parliament, have called you before them, and have found that the matters whereof you are impeached are true and notorious; therefore the said Commons do adjudge and award that, for the offence you have committed, you be returned this night prisoner to the Fleete, and to-morrow morning you shall be brought to Westminster into the yard before the Great Hall of Pleas, and do there stand in the pillory from nine until eleven of the clock in the forenoon, with a paper upon your hat, bearing this inscription in capital letters: — FOR FALSE, MALICIOUS, AND DESPITEFUL SPEECHES AGAINST THE KING'S DAUGHTER AND HER HUSBAND: from thence you shall presently ride to the Exchange within the city of London, upon a horse without a saddle, with your face backwards towards the horse's tail, holding the tail in your hand, with the said paper on your head; and that you do there stand in the pillory for two hours; and from thence you shall ride in like manner to the Fleete, and be imprisoned there; and next Friday morning you are to ride in like manner into Cheapside, and there stand in the pillory with the said paper and inscription as before, by the space of two

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A.D. 1621, 1622.

hours, and then ride back in like manner to the Fleete; and further, you shall pay to the King a fine of 1000*l.*"

The Lords were highly indignant at this sentence,—by no means on account of its cruelty, but because it was an encroachment on their jurisdiction. They insisted that the impeachment should go on before them; and the other House having acquiesced, they awarded the same punishment, adding to it that Mr. Floyde should be whipped at the cart's tail, notwithstanding an objection was made to this by some peers "because he was a gentleman." *

Mr. Speaker Richardson, at the commencement of the session, had been considered a patriot; but in the course of it he yielded to the blandishments of the Court, and submitted to the royal mandates which he received from time to time. James, taking it into his head that he could, by the direct exercise of his prerogative, adjourn the two houses of parliament as well as prorogue them, sent down a commission to the House of Commons, ordering an adjournment from the 4th of June to the 20th of Nov. following. The popular members opposed the reading of it, saying, that "although in compliance with a request of the King they might agree to an adjournment for a reasonable time, an adjournment could only be by a vote of the majority." But the Speaker, without putting any vote, declared the House to be adjourned till the 20th day of November, saying that this was by the King's order,—and following the form used by the Lord Chancellor in announcing a prorogation.

This point of parliamentary law was not then settled, and the Speaker's decision was acquiesced in; but he was afterwards censured by the House for "his habit of leaving the chair as often as the acts of any state officers were called in question in a manner disagreeable to the Court." †

On the dissolution of the parliament in January, 1622, Richardson returned to the undisturbed pursuit of his profession; and, seeing that popularity did not lead to promotion, he now openly enlisted himself a retainer of the Duke

* "Another question was, whether he should have his ears nailed to the pillory? And it was agreed *per plures*, not to be nailed."—1 *Parl. Hist.* 1261.
† Guthrie, p. 754.

of Buckingham. As a reward for his servility he was made a King's Serjeant.

He is made Chief Justice of the Common Pleas. Nov. 28. 1626.

Continuing steadily in this line, soon after the accession of Charles I. he was appointed Chief Justice of the Court of Common Pleas. His first judicial opinion indicated some degree of independence. Mr. Pine, a country squire, having a company of guests at his table, talked very irreverently of the King, saying to one who had boasted of having seen the King at Mr. Pawlet's, at Hinton, "Then hast thou seen as unwise a king as ever was; for he is carried as a man would carry a child with an apple. As for meeting him at Mr. Pawlet's, that is nothing, for I might have had him at my house; he is to be carried any whither. Before God he is no more fit to be king than Kirkwright." This Kirkwright was a well-known simpleton.

For these words the Government wished that Mr. Pine should be hanged, drawn, and quartered; but,—a doubt being raised whether the mere speaking of them amounted to treason,—before bringing him to trial the question was referred to the Judges, and the Attorney General cited a great many cases in former reigns in which men had been convicted and executed for a similar offence. However, Chief Justice Richardson concurred in the opinion that "the mere speaking of the words, although they were as wicked as might be, did not amount to treason; for it had been adjudged that to charge the King with a personal vice, as to say of him 'He is the greatest whoremonger or drunkard in the kingdom,' is no treason."* So Mr. Pine entirely escaped, as the Crown lawyers would not acknowledge that the words merely constituted a misdemeanor.

A.D. 1628. His opinion against torture.

On the next consultation of the Judges, Richardson likewise gained credit. Torture, to extort confessions from state criminals, had been practised by warrant from the Privy Council in every reign, at least since the time of Henry VI.; but, from the growing intelligence of the age, a question had been made respecting its legality. At last, Felton, the assassin of the Duke of Buckingham, having denied that he had been prompted to this deed by the Puritans, Laud told

* Cro. Car. 117.

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him "if he would not confess, he must go to the rack." He replied, "But in the extremity of torture I know not whom I may accuse; I may say that I was prompted by my Lord of London, or some other of your Lordships." They then fell into debate, whether by the law of the land they could justify putting him to the rack; and the King, being present, said, "Before any such thing be done, let the advice of the Judges be had therein, whether it be legal or no?" And his Majesty desired Sir Thomas Richardson, the Chief Justice of the Common Pleas, to say "whether it might be done by law?" adding, "if it may, I will not use my *prerogative* in this point." Richardson consulted all the Judges at Serjeants' Inn, and reported to the King their unanimous opinion, that "the prisoner ought not to be tortured by the rack, for no such punishment is known or allowed by our law."* Notwithstanding the King's salvo about his *prerogative*, Felton, without any further attempt to force from him that he had accomplices, was brought to trial in due course of law; and torture has never since been inflicted in England.

Chief Justice Richardson also showed moderation in the case of Mr. Richard Chambers, a London merchant, prosecuted in the Star Chamber for saying "that merchants are in no part of the world so screwed and wrung as in England, and that in Turkey they had more encouragement." Laud moved that, besides being imprisoned till he made submission for his offence at the Council Board, in the Court of Star Chamber, and on the Royal Exchange, he should be fined 3000*l.* Richardson insisted that a fine of 500*l.* would be sufficient, and he succeeded in reducing it to 2000*l.*†

Considering the moderation with which he conducted himself since he was promoted to the bench, we are quite at a loss to account for a favour now conferred upon him. Hitherto no common law judge had ever been made a peer till he had retired from the seat of justice; and a notion prevailed, that, as a writ of error lay from the courts of common law to the House of Lords, the same individual could not be a member of the court of original jurisdiction and of the court of appeal. Nevertheless it was resolved that the family

* 3 St. Tr. 367. † 3 St. Tr. 373.

of Sir Thomas Richardson should be ennobled, and that all question should be avoided as to his disqualification. From the venality of the times, the probability is, that the payment of a good round sum of money removed all the objections that might have been made to the plan. By his first marriage the Chief Justice had five sons; and he was married again to Elizabeth, daughter of Sir Thomas Beaumont, and relict of Sir John Ashburnham, ancestor of the present Earl of Ashburnham. This Elizabeth, by letters patent dated 28th of Feb. 1628-29, was created a peeress of Scotland by the title of Baroness Cramond, — to hold to her for life, with remainder to Thomas Richardson, eldest son and heir apparent of the Chief Justice, her husband, by Ursula his first wife, — with remainder to the heirs male of her said husband in succession.* Many gibes and pasquinades were elicited by this occurrence, for the amusement of Westminster Hall.

A.D. 1629. His wife is made a peeress of Scotland.

Between two and three years afterwards, the "getter of peers," as he was denominated, was elevated to be Chief Justice of England. But it is doubtful whether this step was agreeable to him. Many supposed that, as in the case of Sir Edward Coke, it was meant as a punishment for some offence he had given to the Government. He lost greatly in profit while he gained in precedence.

He is made Chief Justice of the King's Bench.

On the 24th of October, 1631, he was conducted to the bar of the Court of King's Bench by a large bevy of Serjeants. Lord Keeper Coventry then, in a short and rather uncomplimentary address, said, "it was his Majesty's pleasure that, for the public good, Sir Thomas Richardson should be moved to preside in the King's Bench;" and in answer he merely said that "he submitted himself to his Majesty's pleasure." Thereupon the writ appointing him was read. Having taken the oaths, he was placed on the bench, and immediately began business.

He presided here between three and four years, and he might have boasted — which few Chief Justices of those days could have done — that he did not do any thing very outrageous while

* According to Crawford, this is the only instance of a female creation in the peerage of Scotland, although many Scotch peerages are descendable to females, having been limited to the first grantee and his heirs general.

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sitting in his own court. Luckily he was not led into temptation, for during this period there were no trials for treason or sedition, and he had only such points to determine as whether an action would lie by a merchant for saying of him "that he is 1000*l.* *worse than nothing*," or by a captain who had served in the wars, for saying to him "Thou art a notorious pimp." *

A.D. 1632. His behaviour in the Star Chamber.

But he was called upon to take part in several Star Chamber cases which excited great interest. In the prosecution against Mr. Sherfield, Recorder of Salisbury, for breaking painted glass in the window of a church, under an order of the vestry, obtained without leave of the Bishop, he allowed that the defendant had acted improperly, but tried to mitigate the heavy punishment proposed by Lord Strafford and Laud, saying —

"The defendant conceived it was idolatry, or the cause of idolatry. The offence was, that God the Father should be pictured there in the form of an old man in blue and red, for he never was nor ever can be pictured. Moses himself saw but his back parts. This worshiping of idols is the greatest sin of all others. It is to give God's honour unto creatures. To my knowledge Mr. Sherfield hath done much good in Salisbury since I went that circuit; so that there is neither beggar nor drunkard to be seen there. I have been long acquainted with him; he sitteth by me sometimes at church; he bringeth a bible to church with him (I have seen it) with the Apocrypha and Common Prayer Book in it, — not of the new cut."

Instead of being dismissed from his office of Recorder, and fined 1000*l.* as proposed, the defendant got off with a fine of 500*l.*†

A.D. 1633. His sentence upon Prynne.

Lord Chief Justice Richardson showed no mercy to poor Prynne when prosecuted in the Star Chamber for publishing his HISTRIO-MASTYX, which inveighed against stage plays, music, dancing, hunting, and other amusements of the King and Queen: —

"My Lords," said he, "since I have had the honour to attend this court, writing and printing of books, though sharply censured, doth grow daily worse and worse. Now, forsooth, every man taketh it upon him to understand everything according to his

* Cro. Car. 225—403. † 3 St. Tr. 519—561.

conceit, and thinks he is nobody except he be in print.* We are troubled here with a book — a monster! 'Monstrum horrendum, informe, ingens;' and I do hold it a most scandalous, infamous libel to the King's Majesty, a most pious and religious King — to the Queen's Majesty, a most excellent and gracious Queen — such a one as this land never enjoyed the like — and I think the earth never had a better. I say eye never saw, nor ear ever heard, of such a scandalous and seditious thing as this misshapen monster is. What saith he in the Epistle Dedicatory, speaking of play books? 'They are printed on far better paper than most octavo and quarto bibles, which hardly find so good a vent as they.' This monster, this huge misshapen monster! I say it is nothing but lies and venom against all sorts of people. He doth not only condemn all play-writers, but all protectors of them, and all beholders of them, and all who dance and all who sing;—they are all damned —and that no less than to hell. He asserts that 'dancing is the devil's profession,' that 'the woman who singeth is the prioress of the devil,' and that 'fiddlers are the minstrels of the devil.' I say this is a seditious libel. I protest unto your Lordships it maketh my heart to swell and my blood in my veins to boil, so cold as I am, to see this or anything attempted which may endanger my gracious Sovereign, or give displeasure to his royal Consort. Not to hold your Lordships longer, it is a most wicked, infamous, scandalous, and seditious libel. Mr. Prynne, I must now come to your sentence, which makes me very sorry, for I have known you long, and now I must utterly forsake you; for I find you have forsaken God and his religion, and the allegiance you owe to both their Majesties and the rule of charity to all noble ladies in the kingdom."

He concluded by moving that the book should be burnt by the common hangman; —and that the author should be disbarred, degraded from his academical degrees, set twice in the pillory, lose both his ears, be fined 5000*l.*, and be imprisoned during life. This sentence was pronounced accordingly †, and carried into rigorous execution.

When left entirely to himself, Lord Chief Justice Richardson rather showed a leaning in favour of the Puritans. While

His ordinance against

* Few know that the *cacoethes scribendi* was so much complained of in England 200 years ago!

† 3 St. Tr. 561—592. Mr. Hume very much lauds the good intention the court thus manifested, to inspire better humour into Prynne and his brother Puritans; although he had doubts whether pillories, fines, and prisons, were the best expedients for that purpose. (Hist. vol. vi. 299.)

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wakes and church-ales. A.D. 1634.

sitting as judge of assize at Exeter, a complaint was brought before him of the profanation of the Sabbath, by holding, on that day, wakes and church-ales, which were said to have led to drunkenness, riot, and immorality. He thereupon not only inveighed against wakes and church-ales in his charge to the grand jury, but issued an ordinance against them, which he directed to be read in all churches within the county. The clergy complained of this as an encroachment on ecclesiastical jurisdiction, and sent up a memorial upon the subject to Archbishop Laud, signed by seventy of them, to prove the antiquity and inoffensiveness of these diversions. Laud, taking it up with a high hand, immediately brought it before the Privy Council, and the Chief Justice was summoned thither to answer for his delinquency. Oldmixon says that, "when he came from the board, the Earl of Dorset, meeting him with tears in his eyes, asked how he did? Judge Richardson replied, 'Very ill, my Lord, for I am like to be choaked with the Archbishop's lawn sleeves.' And for this cause alone, he was, by Laud's means, to his great grief and loss, put from riding the Western, and forced to go the Essex circuit, reported the meanest of all others, and which no justice but the puisne judge or serjeant used to ride." Part of the sentence of the Privy Council being that the Chief Justice should reverse his ordinance, he did so with a very ill grace. After reciting it in an instrument under his hand and seal, he said, "But being commanded to reverse the same, I do hereby reverse it as much as in me lies; yet, I doubt not, if the Justices of the Peace will truly inform his Majesty of the grounds thereof, and of the great disorders occasioned by wakes and church-ales, his Majesty will give order to confirm it."

The Justices accordingly drew up a petition in favour of what the Chief Justice had done; but the Archbishop, being informed of what was coming, caused a proclamation to be published in the King's name, and to be read in all churches and chapels, by which "dancing, either for men or women, archery for men, leaping, vaulting, and any such harmless recreation, after divine service on Sundays, were enjoined on all the King's loving subjects." *

* 2 Oldmixon, 121.; 3 Kennett, 71.; Whitel. Mem. 17.; Dart's History of Westminster Abbey.

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Notwithstanding the hostility of Laud, Chief Justice Richardson was well respected by Charles I., who, at this period of his reign, acted as his own minister; and he retained his office till he died, on the 4th day of February, 1635, in the 67th year of his age. He was buried in Westminster Abbey, behind the choir, near the cloisters door, where may now be seen a beautiful monument in black marble erected to his memory, with his bust in his judge's cap, robes, ruff, and collar of S.S., and an inscription which, after a pompous enumeration of his offices and of his virtues, thus concludes: "Thomas Richardson fil. unicus eques aurat. Baro Scotiæ designatus patri incomparabili posuit."

A.D. 1635. His death.

He seems to have had in his own time but an indifferent reputation for honesty and veracity; and, after his death, he was more talked of as a jester than a lawyer. The following anecdote is recorded by L'Estrange: — "Judge Richardson, in going the Westerne Circuite, had a great flint stone throwne at his head by a malefactor, then condemned (who thought it meritorious, and the way to be a benefactor to the Commonwealth, to take away the life of a man so odious), but leaning low on his elbow, in a lazy, recklesse manner, the bullett flew too high, and only took off his hatt. Soone after, some friends congratulating his deliverance, he replyde by way of jeast (as his fashion was to make a jest of every thing), — 'You see now, if I had beene an *upright judge* (intimating his reclining posture) I had been slaine.'"*

His jests.

His contemporaries did not spare him, notwithstanding his high judicial dignity, as we learn from another anecdote of L'Estrange: — "The Lord Chief Justice Richardson went with Mr. Mewtis, the Clarke of the Councell, to see his house at *Gunness-bury*†, which was furnish't, with many pretty knacks and rarities. My Lord viewed all, and lik't well, 'but, Mr. Mewtis,' sayes he, 'if you and I agree upon the price, I must have all your fooleries and bables into the bargaine.' 'Why, my Lord,' sayes he, 'for these I will not

Characters of him by his contemporaries.

* Anecdotes and Traditions," published by Camden Society, p. 53.

† Gunnersbury, afterwards celebrated as the seat of the Princess Amelia, daughter of George II.

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stand with you; they may e'ene be entail'd if you pleas upon you and your heires.'" *

Another collection of legal jokes says, "When Charles Richardson was dead (younger son of the Lord Chief Justice, then living), some were questioning where the body should be interred. 'Why,' says one, 'where should he be buried but where his father *lyes* — at Westminster?'" †

His descendants.

The Chief Justice left behind a large estate to his eldest son, who, on the death of the first Baroness Cramond, became Lord Cramond; and the title was borne by the descendants of the Chief Justice till the year 1735, when it became extinct from the failure of heirs male.

A.D. 1635. Sir John Brampston.

On the vacancy in the office of Chief Justice of the King's Bench, created by the death of Sir Thomas Richardson, the King and his Ministers were exceedingly anxious to select a lawyer fitted to be his successor. Resolved to raise taxes without the authority of Parliament, they had launched their grand scheme of ship-money, and they knew that its validity would speedily be questioned. To lead the opinions of the Judges, and to make a favourable impression on the public, they required a Chief on whose servility they could rely, and who, at the same time, should have a great reputation as a lawyer, and should be possessed of a tolerable character for honesty. Such a man was MR. SERJEANT BRAMPSTON.

He was born at Maldon, in Essex, of a family founded there in the reign of Richard II. by a citizen of London, who had made a fortune in trade and had served the office of sheriff. When very young he was sent to the University of Cambridge, and there he gained high renown by his skill in disputation, which induced his father to breed him to the bar. Accordingly, he was transferred to the Middle Temple, and studied law there for seven years, with unwearied assiduity. At the end of this period he was called to the bar, having then amassed a store of law sufficient to qualify him at

He studies law at the Middle Temple.

* Anecdotes and Traditions, p. 19.

† Ib. 21. This reminds one of the epitaph prepared by John Clerk, Lord Eldin, for a Scotch judge: —

"Here *ceaseth to lye*
The Right Honourable" &c. &c.

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once to step upon the bench. Different public bodies strove to have the benefit of his advice; and very soon he was standing counsel for his own University, and likewise for the City of London, with an annual fee *pro concilio impenso et impendendo.* Having been some years an "apprentice," he took the degree of Serjeant-at-law.

He starts in the "sedition line."

According to a practice very common in our profession, he had, in the language of Mr. Gurney the famous stenographer, "started in the sedition line," that is, defending persons prosecuted for political offences by the Government. He was counsel for almost all the patriots who, in the end of the reign of James I. and the beginning of the reign of Charles I., were imprisoned for their refractory conduct in the House of Commons; and one of the finest arguments to be found in our books is one delivered by him in Sir Thomas Darnel's case, to prove that a warrant of commitment by order of the King, without specifying the offence, is illegal.*

He goes over to the Government.

He refused a seat in the House of Commons, as it suited him better to plead for those who were in the Tower than to be sent thither himself. By and by, the desire of obtaining the honours of the profession waxed strong within him, and he conveyed an intimation, by a friend, to the Lord Keeper that it would be much more agreeable to him to be retained for the Government than to be always against it. The offer was accepted; he was taken into the counsels of Noy, the Attorney General, and he gave his assistance in defending all stretches of prerogative. Promotions were now showered down upon him; he was made Chief Justice of Ely, Attorney General to the Queen, King's Serjeant, and a Knight. Although very zealous for the Crown, and really unscrupulous, he was anxious to observe decency of deportment, and to appear never to transgress the line of professional duty.

A.D. 1665. He is made Chief Justice of the King's Bench.

Noy would have been the man to be appointed Chief Justice of the King's Bench to carry through his tax by a judicial decision in its favour, but he had suddenly died soon after the ship-money writs were issued; and, after him, Sir John Brampston was deemed the fittest person to place at the head

* 3 St. Tr. 5.

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A.D. 1635.

of the common law Judges. On the 18th of April, 1635, his installation took place, which was, no doubt, very splendid; but we have no account of it except the following, by Sir George Croke: —

"First, the Lord Keeper made a grave and long speech, signifying the King's pleasure for his choice, and the duties of his place: to which, after he had answered at the bar, returning his thanks to the King, and promising his endeavour of due performance of his duty in his place, he came from the bar into court, and there kneeling, took the oaths of supremacy and allegiance: then standing, he took the oath of judge: then he was appointed to come up to the bench, and then his patent (which was only a writ) being read, the Lord Keeper delivered it to him. But Sir William Jones (the senior puisne judge) said, the patent ought to have been read before he came up to the bench."*

In quiet times, Lord Chief Justice Brampston would have been respected as an excellent judge. He was above all suspicion of bribery, and his decisions in private causes were sound as well as upright. But, unhappily, he by no means disappointed the expectations of the Government.

His opinion respecting the legality of ship-money.

Soon after his elevation, he was instructed to take the opinion privately of all the Judges on the two celebrated questions —

"1. Whether, in cases of danger to the good and safety of the kingdom, the King may not impose ship-money for its defence and safeguard, and by law compel payment from those who refuse? 2. Whether the King be not the sole judge both of the danger and when and how it is to be prevented?"

There is reason to think that he himself was taken in by the craft of Lord Keeper Coventry, who represented that the opinion of the twelve Judges was wanted merely for the King's private satisfaction, and that no other use would be made of it. At a meeting of all the Judges in Serjeants' Inn Hall, Lord Chief Justice Brampston produced an answer to both questions in the affirmative, signed by himself. Nine

* Cro. Car. 403. These forms are no longer used. The Chief Justice is now sworn in privately before the Chancellor; and without any speechifying he enters the court and takes his places on the bench with the other judges. But in Scotland they still subject the new judge to *trials* of his sufficiency: while these are going on he is called Lord Probationer; and he might undoubtedly be *plucked* if the Court should think fit.

other Judges, without any hesitation, signed it after him; but two, Croke and Hutton, declared that they thought the King of England never had such a power, and that, if he ever had, it was taken away by the act *De Tallagio non concedendo*, the PETITION OF RIGHT, and other statutes: but they were induced to sign the paper, upon a representation that their signature was a mere formality. A.D. 1635.

The unscrupulous Lord Keeper, having got the paper into his possession, immediately published it to the world as the unanimous and solemn decision of all the Judges of England; and payment of ship-money was refused by JOHN HAMPDEN alone.

Hampden's Case.

His refusal brought on the grand trial, in the Exchequer Chamber, upon the validity of the imposition. Lord Chief Justice Brampston, in a very long judgment, adhered to the opinion he had before given for the legality of the tax, although he characteristically expressed doubt as to the regularity of the proceeding on technical grounds. Croke and Hutton manfully insisted that the tax was illegal; but, all the other Judges being in favour of the Crown, Hampden was ordered to pay his 20*s*.*

Lord Say's Case. A.D. 1638.

Soon after, the same point arose in the Court of King's Bench in the case of the Lord Say, who, envying the glory which Hampden had acquired, allowed his oxen to be taken as a distress for the ship-money assessed upon him, and brought an action of trespass for taking them. But Banks, the Attorney General, moved that counsel might not be permitted to argue against what had been decided in the Exchequer Chamber; and Lord Chief Justice Brampston said, "Such a judgment should be allowed to stand until it were reversed in parliament, and none ought to be suffered to dispute against it."†

The Crown lawyers were thrown into much perplexity by the freak of the Rev. Thomas Harrison, a country parson, who can hardly be considered a fair specimen of his order at that time, and must either have been a little deranged in his intellect, or animated by an extraordinary eagerness for ecclesiastical promotion. Having heard that Mr. Justice

* 3 St. Tr. 826—1283. † Cro. Car. 524.

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A.D. 1636. Harrison's Case.

Hutton, while on the circuit, had expressed an opinion unfavourable to ship-money, he followed him to London, and, while this reverend sage of the law was seated, with his brethren, on the bench of the Court of Common Pleas, and Westminster Hall was crowded with lawyers, suitors, and idlers, marched up to him, and, making proclamation "*Oyez! Oyez! Oyez!*" said with a loud voice, "Mr. Justice Hutton! you have denied the King's supremacy, and I hereby charge you with being guilty of high treason." The Attorney General, however much he might secretly honour such an ebullition of loyalty, was obliged to treat it as an outrage, and an *ex-officio* information was filed against the delinquent for the insult he had offered to the administration of justice. At the trial the reverend defendant confessed the speaking of the words, and gloried in what he had done; saying —

"I confess that judges are to be honoured and revered as sacred persons so long as they do their duty; but having taken the oath of supremacy many times, I am bound to maintain it, and when it is assailed, as by the denying of ship-money, it is time for every loyal subject to strike in." *Brampston, C. J.:* "The denying of ship-money may be, and I think is, very wrong; but is it against the King's supremacy?" *Harrison:* "As a loyal subject, I did labour the defence of his Majesty, and how can I be guilty of a crime? I say, again, that Mr. Justice Hutton has committed treason, for upon his charge the people of the country do now deny ship-money. His offence being openly committed, I conceived it not amiss to make an open accusation. The King will not give his judges leave to speak treason, nor have they power to make or pronounce laws against his prerogative. We are not to question the King's actions; they are only between God and his own conscience. 'Sufficit Regi, quod Deus est.' This thesis I will stand to—that whatsoever the King in his conscience thinketh he may require, we ought to yield."

The defendant having been allowed to go on in this strain for a long time, laying down doctrines new in courts of justice, although, in those days, often heard from the pulpit, the Chief Justice at last interposed, and said —

"Mr. Harrison, if you have anything to say in your own defence, proceed; but this raving must not be suffered. Do you not think that the King may govern his people by law?" *Harrison:*

"Yes, and by something else too. If I have offended his Majesty in this, I do submit to his Majesty, and crave his pardon."—*Brampston, C. J.:* "Your 'If' will be very ill taken by his Majesty; nor can this be considered a submission."

The defendant, being found guilty, was ordered to pay a fine to the King of 5000*l.*, and to be imprisoned, — without prejudice to the remedy of Mr. Justice Hutton by action. Such an action was accordingly brought, and, so popular was Mr. Justice Hutton, that he recovered 10,000*l.* damages; whereas it was said that, if the Chief Justice had been the plaintiff in an action for defamation, he need not have expected more than *a Norfolk groat.**

Lord Chief Justice Brampston's services were likewise required in the Star Chamber. He there zealously assisted Archbishop Laud in persecuting Williams, Bishop of Lincoln, ex-Keeper of the Great Seal. When sentence was to be passed on this unfortunate prelate, ostensibly for tampering with the witnesses who were to give evidence against him on a former accusation which had been abandoned as untenable, but in reality for opposing Laud's popish innovations in religious ceremonies, Brampston declaimed bitterly against the right reverend defendant, saying — A.D. 1637.

"I find my Lord Bishop of Lincoln much to blame in persuading, threatening, and directing of witnesses; — a foul fault in any, but in him most gross who hath *curam animarum* throughout all his diocese. To destroy men's souls is most odious, and to be severely punished. I do hold him not fit to have the cure of souls, and therefore I do censure him to be suspended *tam ab Officio quam a Beneficio*, to pay a fine of 10,000*l.*, and to be imprisoned during the King's pleasure." † Brampston's judgment on the Bishop of Lincoln.

This sentence, although rigorously executed, did not satiate the vengeance of the Archbishop; and the Bishop, while lying a prisoner in the Tower, having received some letters from one of the masters of Westminster School, using disrespectful language towards the Archbishop, and calling him "a little great man," a new information was filed against the Bishop for not having disclosed these letters to a magis- A.D. 1639.

* Cro. Car. 503.; Hutt. 131.; 3 St. Tr. 1370.

† 3 St. Tr. 787.

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A.D. 1639.

trate, that the writer might have been immediately brought to justice. Of course he was found *guilty;* and, when the deliberation arose about the punishment, thus spoke Lord Chief Justice Brampston: —

"The concealing of the libel doth by no means clear my Lord Bishop of Lincoln, for there is a difference between a letter which concerns a private person and a public officer. If a libellous letter concern a private person, he that receives it may conceal it in his pocket or burn it; but if it concern a public-person, he ought to reveal it to some public officer or magistrate. Why should my Lord of Lincoln keep these letters by him, but to the end to publish them, and to have them at all times in readiness to be published? I agree in the proposed sentence, that, in addition to a fine of 5000*l.* to the King, he do pay a fine of 3000*l.* to the Archbishop, seeing the offence is against so honourable a person, and there is not the least cause of any grievance or wrong that he hath done to my Lord of Lincoln. For his being degraded, I leave it to those of the Ecclesiastical Court to whom it doth belong. As to the pillory, I am very sorry and unwilling to give such a sentence upon any man of his calling and degree. But when I consider the quality of the person, and how much it doth aggravate the offence, I cannot tell how to spare him; for the considerations that should mitigate the punishment add to the enormity of the offence."*

Proposal by Chief Justice Brampston to set a bishop in the pillory.

As no clerical crime had been committed for which degradation could be inflicted, and as it was thought not altogether decent that a bishop, wearing his lawn sleeves, his rochet, and his mitre, should stand on the pillory, to be pelted with brickbats and rotten eggs, the Lord Chief Justice was overruled respecting this last suggestion, and the sentence was limited to the two fines, with perpetual imprisonment. The defendant was kept in durance under it till the meeting of the Long Parliament, when he was liberated; and, becoming an Archbishop, he saw his persecutor take his place in the Tower, while he himself was placed at the head of the Church of England. †

A.D. 1641. Brampston impeached by the Long Parliament.

Now came the time when Lord Chief Justice Brampston himself was to tremble. The first grievance taken up was ship-money, and both Houses resolved that the tax was illegal,

* 3 St. Tr. 814.

† See Lives of Chancellors, vol. ii. ch. lix.

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A.D. 1641.

and that the judgment against Hampden for refusing to pay it ought to be set aside. Brampston was much alarmed when he saw Strafford and Laud arrested on a charge of high treason and Lord Keeper Finch obliged to fly beyond the seas.

The next impeachment voted was against Brampston himself and five of his brethren, but they were more leniently dealt with, for they were only charged with "high crimes and misdemeanours;" and, happening to be in the House of Lords when Mr. Waller brought up the impeachment, it was ordered "that the said Judges for the present should enter into recognizances of 10,000*l.* each to abide the censure of Parliament." This being done, they enjoyed their liberty, and continued in the exercise of their judicial functions; but Mr. Justice Berkeley, who had made himself particularly obnoxious by his indiscreet invectives against the Puritans, was arrested while sitting on his tribunal in Westminster Hall, and committed a close prisoner to Newgate.*

Chief Justice Brampston tried to mitigate the indignation of the dominant powers by giving judgment in the case of *Chambers* v. *Sir Edward Brunfield, Mayor of London,* against the legality of ship-money. To an action of trespass and false imprisonment, the defendant justified by his plea under "a writ for not paying of money assessed upon the plaintiff towards the finding of a ship." There was a demurrer to the plea, so that the legality of the writ came directly in issue. The counsel for the defendant rose to cite Hampden's case and Lord Say's case, in which all their Lordships had concurred, as being decisive in his favour; but Brampston, C. J. said, —

"We cannot now hear this case argued. It hath been voted and resolved in the Upper House of Parliament and in the House of Commons, *nullo contradicente*, that the said writ, and what was done by colour thereof, was illegal. Therefore, without further dispute thereof, the Court gives judgment for the plaintiff." †

July. The Commons were much pleased with this submissive conduct, but *pro formâ* they exhibited articles of impeachment against the Chief Justice. To the article founded on ship-

* 2 Parl. Hist. 700. † Cro. Car. 601.

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A.D. 1642.

money he answered, "that at the conference of the Judges he had given it as his opinion that the King could only impose the charge in case of necessity, and only during the continuance of that necessity."*

The impeachment was allowed to drop; and the Chief Justice seems to have coquetted a good deal with the parliamentary leaders, for, after the King had taken the field, he continued to sit in his court at Westminster, and to act as an attendant to the small number of peers who assembled there, constituting the House of Lords.

Brampston is summoned to the head-quarters of Charles I.

But when a battle was expected, Charles, being told that the Chief Justice of England was Chief Coroner, and, by virtue of his office, on view of the body of a rebel slain in battle, had authority to pronounce judgment of attainder upon him, so as to work corruption of blood and forfeiture of lands and goods, thought it would be very convenient to have such an officer in the camp, and summoned Lord Chief Justice Brampston to appear at head-quarters in Yorkshire. The Lords were asked to give him leave of absence, to obey the King's summons, but they commanded him to attend them day by day at his peril. He therefore sent his two sons to make his excuse to the King. His Majesty was highly incensed by his asking leave of the Lords; and, — considering another apology that he made, about the infirmity of his health and the difficulty of travelling in the disturbed state of the country, a mere pretence, — by a *supersedeas* under the great seal, dismissed him from his office, and immediately appointed SIR ROBERT HEATH to be Chief Justice of England in his stead.

Oct. 10. Refusing to go, he is dismissed.

* His son, the Autobiographer, to prove the truth of this allegation, relates the following anecdote: — "I beinge with my Lord Cheife Justice Bramston at Mr. Justice Crooke's chambers in Serjeants' Inn, my Lord Chief Justice spake to Mr. Justice Crooke to this effect: 'Brother Crooke, you know what opinion I delivered upon consideration with the other Judges upon the question sent unto us concerninge ship monie; you are old, and if it should please God to call you, I would be glade that it might be knowne what my opinion was, and how I caried myselfe in it; therefore, I pray tell it to our brother Phesant,'—if Mr. Justice Crooke should die. Whereunto Mr. Justice Crooke answered: — 'That he did well remember that my Lord Bramston did declare his opinion to bee, that the Kinge could impose that charge, but only in case of necessitie, and only duringe the continuance of that necessitie; and that my Lord Bramston refused to subscribe unto the question otherwise, but was overruled by the more voices, whereupon he did subscribe.'"—p. 79. But I believe this to be a pious invention, and, if it were true, would only show the Chief Justice to have acted in a very cunning and sneaking manner.

In a few days after, the ex-Chief Justice received the following handsome letter from his successor: — CHAP. XI.

"My Lord (for soe you shall ever be to me), when you shall truely understand the passages of things you will know that I have binn farr from supplantinge you, whome I did truely love and honor, and that I have binn and will be your servant; and I believe you know that the Kinge hath ingaged himselfe to be mindfull of you, and I assure you, at my humble suite, he hath given me leave to be his remembrancer, which I will not neglect: in the mean tyme I am and ever will be your very true servant A.D. 1642.

"ROBERT HEATH."

Brampston must now have given in his full adhesion to the parliamentary party, for in such favour was he with them that, when the treaty of Uxbridge was proceeding, they made it one of their conditions that he should be reappointed Lord Chief Justice of the Court of King's Bench; although the Autobiographer stoutly denies that his father ever temporised, and says that this proposal only shows that "they had a better opinion of him than he had of them or their cause." * From the same source we have the following further statement, which must be taken with some grains of allowance:— He is in favour with the parliamentary leaders.

"After that, they would have brought him into the House of Lords as an assistant, *which he did not absolutely denie*, but avoided attending by the help of freinds. They had thoughts of makeing him theire keeper of theire seale; and the Commons passed some vote for it in March, 1646, which was to be communicated to the Lords. My father went to London and prevented it by his freinds in the Lords' House. And thus he escaped ruine; for had he been put to refuse (as accept he would not) any imployment, he must inevitably have binn undone. At length Crumwell toke upon him the Protectorship; he sent his Secretary Thurlow to him, and to bringe him to the Cockpitt at Whitehall, where he treated him with great respect, and urged him to take the office of Cheife Justice again; but he excused himselfe as being old, and, havinge made tryall, could not satisfie; therefore he must now medle noe more with publique matters. Crumwell brought him down stayers, sayinge he would take no deniall, and wished him to advise with his brother Rolle, whoe was his freind and an honest man. And I know Rolle came to my father and protested he would be banished rather then be a judge: when, contrary to A.D. 1646.

* Page 88.

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these words, he was first a Puisne Judge, and afterwards Cheife Justice of the Bench, which they called the Upper Bench." *

I will not say that he would have been willing to resume his office, with the title of "Chief Justice of the Upper Bench of HIS HIGHNESS OLIVER, THE LORD PROTECTOR," if Rolle had not outwitted him, and got it for himself; but it is quite clear that he conformed very submissively to the republican *régime.*

His death.

After Rolle's appointment Brampston withdrew entirely from public life, and spent the remainder of his days at his country-house in Essex. There he expired, on the 2d of September, 1654, in the 78th year of his age. If courage and principle had been added to his very considerable talents and acquirements, he might have gained a great name in the national struggle which he witnessed; but, from his vacillation, he fell into contempt with both parties, and, although free from the imputation of serious crimes, there is no respect entertained for his memory.

However, the following lines, to be read on his monument in the church of Roxwell in Essex, represent him as very faultless, and very sanguine as to the result of his own trial at the GRAND ASSIZE: —

His epitaph.

"AMBITIONE, IRA, DONOQUE POTENTIOR OM
QUI JUDEX ALIIS LEX FUIT IPSE SIBI;
QUI TANTO OBSCURAS PENETRAVIT LUMINE CAUSAS
UT CONVICTA SIMUL PARS QUOQUE VICTA FORET;
MAXIMUS INTERPRES, CULTOR SANCTISSIMUS ÆQUI,
HIC JACET, HEU, TALES MORS NIMIS ÆQUA RAPIT!
HIC ALACRI EXPECTAT SUPREMUM MENTE TRIBUNAL,
NEC METUIT JUDEX JUDICIS ORA SUI."

One of his sons, the Autobiographer, was made a Knight of the Bath by Charles II., and the other a Baron of the Exchequer. His possessions are inherited by his lineal heir, Thomas William Brampston, Esq., now one of the representatives for his native county; a distinction which has been conferred upon the family in fifteen parliaments since the death of the Chief Justice.†

Sir Robert Heath.

We must now attend to Sir Robert Heath, who was the

* Pp. 88, 89.

† See Clar. Hist. Reb. ii. 32. 179.; Peck's Des. Cur. lib. xiv. p. 27.; Whit. Mem. p. 245.; Sir John Brampston's Autobiography, published in 1845 by the Camden Society,—very ably edited by Lord Braybrooke, the President.

last Chief Justice of Charles I., and was appointed by him to pass judgment, not on the living, but on the dead. If we cannot defend all his proceedings, we must allow him the merit — which successful members of our profession can so seldom claim — of perfect consistency; for he started as a high prerogative lawyer, and a high prerogative lawyer he continued to the day of his death.

His education.

He was of a respectable family of small fortune, in Kent, and was born at Etonbridge in that county. He received his early education at Tonbridge School, and was sent from thence to St. John's College, Cambridge. His course of study there is not known; but when he was transferred to the Inner Temple, we are told that he read law and history with the preconceived conviction that the King of England was an absolute sovereign, and so enthusiastic was he that he converted all he met with into arguments to support his theory.

His consistency as a supporter of absolute prerogative.

One most convenient doctrine solved many difficulties which otherwise would have perplexed him: he maintained that Parliament had no power to curtail the essential prerogatives of the Crown, and that all acts of parliament for such a purpose were *ultra vices* and void. There is no absurdity in this doctrine, for a legislative assembly may have only a limited power, — like the Congress of the United States of America; and it was by no means so startling then as now, when the *omnipotence of parliament* has passed into a maxim. He had no respect whatever for the House of Commons or any of its privileges, being of opinion that it had been called into existence by the Crown only to assist in raising the revenue, and that, if it refused necessary supplies, the King, as PATER PATRIÆ, must provide for the defence of the realm in the same manner as before it had existence. He himself several times refused a seat in that assembly, which he said was "only fit for a pitiful Puritan or a pretending patriot;" and he expressed a resolution to get on in his profession without beginning, as many of his brethren did, by herding with the seditious, and trying to undermine the powers which for the public good the Crown had immemorially exercised and inalienably possessed. To enable him to defend these with proper skill and effect, he was

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constantly perusing the old records, and, from the Conquest downwards, they were as familiar to him as the cases in the last number of the periodical Reports are to a modern practitioner. Upon all questions of prerogative law which could arise he was complete master of all the authorities to be cited for the Crown, and of the answers to be given to all that could be cited against him.

His reputation as a "Reader."

As he would neither go into parliament nor make a splash in Westminster Hall in the "sedition line," his friends were apprehensive that his great acquirements as a lawyer never would be known; but it happened that, in the year 1619, he was appointed "Reader" for the Inner Temple, and he delivered a series of lectures, explaining his views on constitutional subjects, which for ever established his reputation.

Jan. 22. 1621. He is made Solicitor General.

On the first vacancy which afterwards occurred in the office of Solicitor General he was appointed to fill it; and Sir Thomas Coventry, the Attorney General, expressed high satisfaction at having him for a colleague. Very important proceedings soon after followed, upon the impeachment of Lord Bacon and the punishment of the monopolists, but as these were all in parliament he made no conspicuous figure during the remainder of the reign of James I.

Oct. 31. 1625.

Soon after the commencement of the reign of Charles I. he was promoted to the office of Attorney General; and then, upon various important occasions, he delivered arguments in support of the unlimited power of the Crown to imprison and to impose taxes, which cannot now be read without admiration of the learning and ingenuity which they display.

His argument in favour of the King's power to imprison without stating the cause.

The first of these was when Sir Thomas Darnel and his patriotic associates were brought by *habeas corpus* before the Court of King's Bench, having been committed in reality for refusing to contribute to the forced loan, but upon a warrant by the King and Council which did not specify any offence. I have already mentioned the speeches of their counsel.* "To these pleadings for liberty," says Hallam, "Heath, the Attorney General, replied in a speech of con-

* Ante, p. 382.

siderable ability, full of those high principles of prerogative which, trampling as it were on all statute and precedent, seemed to tell the Judges that they were placed there to obey rather than to determine." *

"This commitment," he said, "is not in a legal and ordinary way, but by the special command of our lord the King, which implies not only the fact done, but so extraordinarily done, that it is notoriously his Majesty's immediate act, and he wills that it should be so. Shall we make inquiries whether his commands are lawful? — who shall call in question the justice of the King's actions? Is he to be called upon to give an account of them?"

After arguing very confidently on the legal maxim that "the King can do no wrong," the constitutional interpretation of which had not yet been settled, he goes on to show how *de facto* the power of imprisonment had recently been exercised by the detention in custody, for years, of popish and other state prisoners, without any question or doubt being raised. "Some," he observed, "there are in the Tower who were put in it when very young: should they bring a *habeas corpus*, would the Court deliver them?" He then dwelt at great length upon the resolution of the Judges in the 34th of Elizabeth in favour of a general commitment by the King; and went over all the precedents and statutes cited on the other side, contending that they were either inapplicable or contrary to law. He carried the Court with him, and the prisoners were remanded without any considerable public scandal being then created.†

During the stormy session in which the "Petition of Right" was passed, Heath, not being a member of the House of Commons, had very little trouble; but once, while it was pending, he was heard against it as counsel for the King before a joint committee of Lords and Commons. Upon this occasion he occupied two whole days in pouring forth his learning to prove that the proposed measure was an infringement of the ancient, essential, and inalienable prerogatives of the Crown.‡ He was patiently listened to, but he made no impression on Lords or Commons; and the King, after receiving an assurance from the Judges that they would

* Const. Hist. i. 527. † 3 St. Tr. 1—234. ‡ Ib. 133.

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effectually do away with the statute when it came before them for interpretation, was obliged to go through the form of giving the royal assent to it.

He prosecutes Sir John Eliot and others for what they had said and done in the House of Commons.

As soon as the parliament was dissolved, Heath was called into full activity; and he now carried every thing his own way, for the extent of the royal prerogative was to be declared by the Court of King's Bench and the Star Chamber. Sir John Eliot, Stroud, Selden, and the other leaders of the country party who had been the most active in carrying the "Petition of Right," were immediately thrown into prison, and, the Attorney General having assembled the Judges, they were as good as their word, by declaring that they had cognisance of all that happened in parliament, and that they had a right to punish whatsoever was done there by parliament men in an unparliamentary manner. *

The imprisoned patriots having sued out writs of *habeas corpus*, it appeared that they were detained under warrants signed by the King, "for notable contempts committed against ourself and our government, and for stirring up sedition against us." Their counsel argued that a commitment by the King is invalid, as he must act by responsible officers; and that warrants in this general form were in direct violation of the "Petition of Right," so recently become law. But Heath still boldly argued for the unimpaired power of arbitrary imprisonment, pretending that the "Petition of Right" was not a binding statute. "A petition in parliament," said he, "is no law, yet it is for the honour and dignity of the King to observe it faithfully; but it is the duty of the people not to stretch it beyond the words and intention of the King, and no other construction can be made of the "Petition" than that it is a confirmation of the ancient rights and liberties of the subject. So that now the case remains in the same quality and degree as it was before the "Petition." He proceeded to turn into ridicule the whole proceedings of the late parliament, and he again went over the bead-roll of his precedents to prove that one committed by command of the King or Privy Council is not bailable. The prisoners were remanded to custody.

* 3 St. Tr. 237.

In answer to the *informations*, it was pleaded that a court of common law had no jurisdiction to take cognisance of speeches made in the House of Commons; that the Judges had often declared themselves incompetent to give an opinion upon such subjects; that the words imputed to Sir John Eliot were an accusation against the ministers of the Crown, which the representatives of the people had a right to prefer; that no one would venture to complain of grievances in parliament if he should be subjected to punishment at the discretion of an inferior tribunal; that the alleged precedents were mere acts of power which no attempt had hitherto been made to sanction; and that although part of the supposed offences had occurred immediately before the dissolution, so that they could not have been punished by the last parliament, they might be punished in a future parliament. But, —

His argument against parliamentary privileges.

"*Heath, A.G.*, replied that the King was not bound to wait for another parliament; and, moreover, that the House of Commons was not a court of justice, nor had any power to proceed criminally, except by imprisoning its own members. He admitted that the judges had sometimes declined to give their judgment upon matter of privilege; but contended that such cases had happened during the session of parliament, and that it did not follow that an offence committed in the House might not be questioned after a dissolution."

The Judges unanimously held, that, although the alleged offences had been committed in parliament, the defendants were bound to answer in the Court of King's Bench, in which all offences against the Crown were cognisable. The parties refusing to put in any other plea, they were convicted, and, the Attorney General praying judgment, they were sentenced to pay heavy fines, and to be imprisoned during the King's pleasure.*

Heath advises the King to impose a new tax on cards.

Heath remained Attorney General two years longer. The only difficulty which the Government now had was to raise money without calling a parliament; and he did his best to surmount it. By his advice a new tax was laid on cards, and all who refused to pay it he mercilessly prosecuted in the

* 3 St. Tr. 235—335.; 2 Hall. Const. Hist. 3—7.

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Court of Exchequer, where his will was law. All monopolies had been put down at the conclusion of the last reign, with the exception of new inventions. Under pretence of some novelty, he granted patents, vesting in particular individuals or companies the exclusive right of dealing in soap, leather, salt, linen rags, and various other commodities, although, of 200,000*l.* thereby levied on the people, scarcely 1500*l.* came into the royal coffers. His grand expedient was to compel all who had a landed estate of 40*l.* a year to submit to knighthood, and to pay a heavy fee; or, on refusal, to pay a heavy fine. This caused a tremendous outcry, and was at first resisted; but the question being brought before the Court of Exchequer, he delivered an argument in support of the claim, in which he traced knighthood from the ancient Germans down to the reigns of the Stuarts, showing that the prince had always the right of conferring it upon all who held of him *in capite* — receiving a reasonable compliment in return. In this instance, Mr. Attorney not only had the decision of the Court, but the law, on his side.* Blackstone says, "The prerogative of compelling the king's vassals to be knighted, or to pay a fine, was expressly recognised in parliament by the statute de Militibus, 1 Ed. II., — but yet was the occasion of heavy murmurs when exerted by Charles I., among whose many misfortunes it was, that neither himself nor his people seemed able to distinguish between the arbitrary stretch and the legal exertion of prerogative." †

His scheme to raise money by compelling people to be knighted.

All these expedients for filling the Exchequer proving unproductive, the last hopes of despotism rested upon Noy, who, having been a patriot, was eager to be the slave of the Court, and proposed his ship-money. If this should be supported by the Judges, and endured by the people, parliaments for ever after would have been unnecessary. Heath was willing enough to defend it; but the inventor was unwilling to share the glory or the profit of it with another. Luckily, at that very time, a vacancy occurred in the office of Chief Justice of the Com-

* The case is not in print, but I have a very full MS. report of it.

† 2 Bl. Com. 69. Compulsory knighthood was abolished by the Long Parliament, 16 Car. I. c. 20.

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mon Pleas; and there being an extreme eagerness to get rid of Heath notwithstanding his very zealous services to the Crown, he was "put upon the cushion," and Noy succeeded him as Attorney General.

Heath is made Chief Justice of the Common Pleas.

To qualify him to be a Judge, it was necessary that he should first become a Serjeant; and, according to ancient custom, he distributed rings, choosing a motto which indicated his intention still to put the King above the law, — "Lex Regis, vis Legis." "On the 25th of October, 1631, he came in his party-coloured robes to the Commom Pleas, and performed his ceremonies as Serjeant, and the same day kept his feast in Serjeants' Inn; and afterwards, on the 27th of October, he was sworn in Chief Justice." *

In the four years during which he held this office, no case of public interest occurred in his own court; but he took an active part in the Star Chamber, and, having prosecuted the Recorder of Salisbury for breaking a painted window without the bishop's consent, he now sentenced him for the offence.† The grand scheme of ship-money, which had been long in preparation, was ready to be brought forward, when, to the astonishment of the world, Heath was removed from his office. It has been said that the Government was afraid of his opinion of ship-money, and wished to prefer Finch — the most profligate of men — on whom they could entirely rely. The truth seems to be, that he continued to enjoy the favour and confidence of the Government, but that a charge had been brought against him of taking bribes, which was so strongly supported by evidence that it could not be overlooked, although no parliament was sitting, or ever likely to sit; and that the most discreet proceeding, even for himself, was to remove him quietly from his office. The removal of judges had, under the Stuarts, become so common, that no great sensation was created by a new instance of it, and people merely supposed that some secret displeasure had been given to the King.

Sept. 14. 1634. He is dismissed for bribery.

It happened at the same time that Banks was made

* Cro. Car. 225.

† St. Tr. 541.; Cro. Car. 375.; Sir W. Jones' Rep. 350.

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Attorney General on the death of Noy, and the following pasquinade was stuck upon the gate of Westminster Hall:—

"*Noy's* flood is gone,
The *Banks* appear,
Heath is shorn down,
And *Finch* sings there."

He returns to practise at the bar.

Heath presented a petition to the King, setting forth his services as Attorney General in supporting the royal right to imprison and to tax the subject, as well as the good-will he had manifested while he sat on the bench; and expressing a hope that, as he had been severely punished for his fault, he might not be utterly ruined, but might be permitted to practise at the bar. To this the King, by advice of the Privy Council, consented, on condition that he should be put at the bottom of the list of Serjeants, and should not plead against the Crown in the Star Chamber.*

Accordingly, he took his place at the bar of the Court of Common Pleas, as junior, where he had presided as chief; and speedily got into considerable business. How he quoted his own decisions when Chief Justice, or treated them when quoted against him, we are not told. He very soon again insinuated himself into the favour of the Government, and assisted Sir John Banks, the Attorney General, in state prosecutions. He first addressed the jury for the Crown in the famous case of Thomas Harrison, indicted for insulting Mr. Justice Hutton in open court; leaving the Attorney General to sum up the evidence.

Jan. 1641. He is made a Puisne Judge of the King's Bench.

Not having been on the bench when the Judges gave the extra-judicial opinion in favour of ship-money, nor when Hampden's trial came on, he escaped impeachment at the meeting of the Long Parliament; and, on the removal of those who were impeached, he was made a Puisne Judge of the Court of King's Bench.

A.D. 1642.

When hostilities were about to commence, he happened to be Judge of Assize at York, where the King lay. He always protested that he was innocent of any plot to make himself Chief Justice of the King's Bench; yet, knowing that, from bodily infirmity and lukewarmness in the royal cause, Brampston would not come to York when summoned

* Cro. Car. 375.

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by the King, there is strong reason to suspect that he suggested the propriety of this summons, on the pretence that the Chief Justice of England might, as Chief Coroner, declare an attainder of rebels slain in battle, — which would subject their lands and goods to forfeiture.* Brampston was ordered to come to York, and, not making his appearance, he was removed from his office; and Sir Robert Heath was created Chief Justice of England, that he might attaint the slaughtered rebels. Sir John Brampston, the Autobiographer, says — "When Sir Robert Heath had that place, that opinion vanished, and nothing of that nature was ever put in practice."

and afterwards Chief Justice of England. A. D. 1642.

Attempt to outlaw and attaint the leaders of the parliamentary party for high treason.

But in the autumn of the year 1643, the royalists having gained an ascendancy in the West of England, a scheme was formed to outlaw, for high treason, the leaders on the parliament side, — as well those who were directing military operations in the field as the noncombatants who were conducting the government at Westminster. A commission passed the great seal, at Oxford, directed to Lord Chief Justice Heath and three other Judges who had taken the King's side, to hold a court of oyer and terminer at Salisbury. Accordingly, they took their seats on the bench, and swore in a grand jury, whom Heath addressed, explaining the law of high treason, showing that flagrant overt acts had been committed by conspiring the King's death and levying war against him, and proving by authorities that all who aided and assisted by furnishing supplies, or giving orders or advice to the rebels, were as guilty as those who fought against his Majesty with deadly weapons in their hands. Bills of indictment were then preferred against the Earls of Northumberland, Pembroke, and Salisbury, and divers members of the House of Commons. The grand jury, however, — probably without having read Grotius and the writers on public law, who say that when there is a civil war in a country the opposite parties must treat each other as if they were belligerents belonging to two independent nations,

* Sir John Brampston relates a conversation on the subject, in which Mr. Hyde, afterwards Earl of Clarendon, said "I am confident that somebody that hath design upon the place hath put the King on this." — (p. 85.)

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but actuated by a sense of the injustice and impolicy of treating as common malefactors those who, seeking to reform abuses and vindicate the liberties of their fellow-citizens, were commanding armies and enacting laws, — returned all the bills *ignoramus;* and there could neither be any trial nor process of outlawry.

This rash attempt only served to produce irritation, and to render the parliamentarians more suspicious and revengeful when negotiations were afterwards opened which might have led to a satisfactory accommodation.*

July 1644. Assizes at Exeter before Chief Justice Heath.

In the summer of the following year, Chief Justice Heath held assizes at Exeter, and there actually obtained the conviction of Captain Turpine, a parliamentary officer, who had been taken in arms against the King, and was produced as a prisoner at the bar. The Sheriff appears to have refused to carry the sentence into execution; but the unfortunate gentleman was hanged by Sir John Berkeley, Governor of Exeter. The Parliament, having heard of their partisan being thus put to death in cold blood, ordered that the Judges who condemned him might be impeached of high treason; but they were afterwards satisfied with passing an ordinance to remove Heath, and his brethren who had sat with him on this occasion, from their judicial offices, and to disable them from acting as judges in all time to come.†

He is removed by the Parliament from his office of Chief Justice.

Sir Robert Heath never ventured to take his seat as Chief Justice of the Court of King's Bench at Westminster, — but, after travelling about for some time with the King, fixed himself at Oxford, where he was made a Doctor of the Civil

* Whitelock, 78. 181.; Ordinance, 22d Nov. 1645. Lord Clarendon says that "Lord Chief Justice Heath, who was made Chief Justice for that purpose, sat to attaint the Earl of Essex, and many other persons who were in rebellion, of high treason" (vol. ii. p. 62.). I do not know whether he refers to the commission at Salisbury: there is no account extant of legal proceedings instituted, then or at any other time, against the Earl of Essex.

Upon the failure of the experiment of putting the common law in force against the rebels, martial law was resorted to; but this was speedily superseded by the Lex Talionis. "The King's officers having caused divers of the Parliament party to be hanged for spies, as one poor man by Prince Rupert's order, upon the great elm near the Bell in Henley, and many others, — now the council of war at Essex House condemned two for spies who brought a proclamation and letters from Oxford to London, which were taken about them, and they were both hanged." — *Whitelock*, p. 78.

† Whitelock, 96. Lords' Journals, Nov. 22. 24. 1645.

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Law, and attended as a Judge when Charles's parliament was held there.

A. D. 1646. He is obliged to fly the country.

When Oxford was, at last, obliged to surrender, and the royalists could no longer make head in any part of England, Heath found it necessary to fly for safety to the Continent. The parliamentary leaders said that they would not have molested him if he had confined himself to the discharge of his judicial duties; or even if, like Lord Keeper Littleton and other lawyers, he had carried arms for the King; but as, contrary to the law of nations, he had proceeded against several of those who bore a commission which the Parliament had granted to them in the King's name, they were determined to make an example of him. Therefore, when an ordinance was passed, granting an indemnity to the royalists who submitted, he was excepted from it by name.* After suffering great privations, he died at Caen, in Normandy, in the month of August, 1649.

His death.

He had, from his professional gains, purchased a large landed estate, which was sequestrated by the Parliament, but afterwards was restored by Charles II. to his son. He had never tried to make his peace with the dominant party by any concession, and he declared that "he would rather suffer all the ills of exile than submit to the ruler of those who had first fought their Sovereign in the field, and then had murdered him on the scaffold." With the exception of his bribery, which was never properly inquired into, and does not seem to have injured him much in the opinion of his contemporaries, no grievous stain is attached to his memory; and we must feel respect for the constancy with which he adhered to his political principles, although we cannot defend them.†

His character.

* Whitelock, 345.

† Wood's Fasti Ox. 45.

CHAPTER XII.

CHIEF JUSTICES OF THE UPPER BENCH DURING THE COMMONWEALTH.

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ALL the Chief Justices whom I have hitherto commemorated held their offices under royal authority, and were supposed to represent the King in the administration of the law. I now come to a class who were appointed by the House of Commons or by the Protector, and were supposed to represent the majesty of the people of England. It is creditable to the times in which they lived, that they were men of learning and respectability. A few fanatical spirits then appeared, who were for abrogating the whole fabric of our laws, and who thought that any disputes about property which might arise would best be decided by some man of plain sense, whose mind was not perverted by attending to legal distinctions; — but the great mass of the nation, although the office of king was abolished, clung fondly to the ancient laws as their best birthright, and were desirous of seeing the bench occupied by men of education and professional skill. For all high judicial qualities, the republican judges were superior to their predecessors and immediate successors.

Merits and services of the republican judges.

Chief Justice Rolle, with whom I begin, was regarded by his contemporaries as a man of profound learning, of great abilities, and of unspotted honour — and I hardly know any action of his life which is liable to grave objection. Not even is an apology required for him from the violence of the times in which he lived.

Chief Justice ROLLE.

He was the younger son of a respectable family in Devonshire, and was born at Heanton in that county, in the year 1589. I know nothing of his school education. He passed between two and three years at Exeter College, Oxford; but, without having taken a degree, he was removed to the Inner

His origin and early career.

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Temple, London. Here he studied the law with an intensity which must astonish the most diligent men in our degenerate age. He had for his companions Selden and others of the same stamp, who could hardly have been made of flesh and blood. Except a very few hours for sleep, they dedicated the whole of their time to professional improvement, reading and commonplacing every thing that had ever been printed respecting the common law of England, together with many unpublished records and MSS. which they found in the Tower and other repositories.* Their only relaxation was meeting together and conversing on what they had read, "for it was the constant and almost daily course for many years together, of those great traders in learning, to bring in their acquests therein, as it were, in a common stock by natural communication, whereby each of them, in a great measure, became the participant and common possessor of each others' learning and knowledge."* Rolle now composed that wonderful Digest which, with additions and corrections made by him in after-life, was given to the world under the title of "Rolle's Abridgment," and which shows not only stupendous industry, but a fine analytical head for legal divisions and distinctions.

He had become a very ripe lawyer before he was called to the bar,—instead of trusting, according to modern fashion, to the chance of picking up *pro re nata* a superficial acquaintance with a particular point on getting a brief. He confined himself to practice in one court — the King's Bench; not running about, as has always been too much the fashion, to any place where he might pick up a fee. "By this means he grew master of the experience of that court, whereby his clients were never disappointed for want of his skill or attendance. He argued frequently and pertinently. His arguments were plain, short, and perspicuous; yet were they significant and weighty."†

He sat for the borough of Callington in the parliaments held in the end of the reign of James I. and the beginning of the reign of Charles I., and took the liberal side, but always

M. P. for Callington. A.D. 1625.

* Wood's Ath. iii. 415. † Ib. 417.

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with moderation. He maintained the good old maxim, that "redress of grievances should come before supply;" and to the argument that the King's wants were so urgent, he replied, that "if the necessity for money was so great, this was the very time to press for redress of grievances."* When the impeachment of the Duke of Buckingham was moved, he ably vindicated the jurisdiction of the House of Commons over such a case, and showed various instances in which it had been beneficially exercised.† During the suspension of parliaments he devoted himself to his forensic pursuits. He did not shine as a popular orator, and he does not seem to have been retained in any important political case either in the Star Chamber or courts of common law, although he continued steadily to support the sound constitutional principles with which he started.

In 1638 he was elected "Reader" of the Inner Temple; but, on account of the prevalence of the plague, he did not deliver his lectures till the beginning of 1640. They were received with much applause, and immediately after finishing them he was called to the degree of Serjeant-at-law.‡

His conduct when the troubles began.

At the meeting of the Long Parliament he declined a seat which, from the interest of his family, he might have had either in Devonshire or Cornwall. He had not nerve to mix in the stormy scenes which he saw were coming; yet he adhered to the Parliament, he took the covenant along with the Earl of Manchester and the Presbyterian leaders, and he conscientiously approved of the reforms introduced both into the church and the state: at the same time he was always for preserving the ancient form of government by King, Lords, and Commons, and he deeply deplored the excesses of the Roundheads.

A.D. 1643.

Under these circumstances it is very creditable to the House of Commons that, merely from a sense of his fitness for the bench, when they were negotiating terms of settlement with the King during the civil war, they stipulated that

Oct. 29. 1645.

Serjeant Rolle should be appointed one of the Judges of the Court of King's Bench; and that afterwards, on the ex-

* 3 Parl. Hist. 35. † Ib. 55. ‡ Dug. Chr. Ser. iii.

tinction of the royal authority, they named him to that office by their own authority.

A.D. 1645. He becomes a Judge under the Parliament.

He was much perplexed how to conduct himself in this emergency. All the forms of judicial procedure were carried on as if the King were on the throne, and the patent of the new Judge would pass under the great seal with the royal arms of England impressed upon it; but the awkward truth could not be disguised, that those under whom he was really to act had fought several pitched battles in the field against his Majesty, and expected very soon to make him a prisoner. The doctrines which Rolle had laid down, when he was writing the title "Prerogative del Roy," came strongly into his mind: but he persuaded himself that the Parliament had right on its side; he saw that its authority was recognised over the greatest part of England; he said to himself that "justice must be administered;" he was soothed, instead of being startled, by the thought that he was to swear allegiance to the King; and he still fostered the fond hope that a pacification would take place, and that the King, yielding to the reasonable conditions proposed to him, might soon again be quietly keeping his court at Whitehall. He submitted to be sworn in before the Lords Commissioners, and took his seat on the bench according to ancient forms, the only innovation being that his patent ran "quamdiù se bene gesserit," instead of "durante bene placito."

He continued a Puisne Judge for three years, during which time he may be considered as *presiding* in the Court of King's Bench; for, although Sir Robert Heath, the King's Chief Justice, was superseded by an ordinance, no successor to him was appointed, — and Rolle had only one colleague, who was very inefficient. But it was allowed that justice was now admirably administered; and if there were a certainty of always having a judge like Rolle in the common law courts, he might safely be left to his own resources without assistance or control.

At last the time arrived when in reality the Commonwealth was established, although the kingly title had not

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A.D. 1648. He is made Chief Justice of the King's Bench.

been formally abolished; and, on the suggestion of Oliver St. John, it was resolved to fill up all the vacant offices of the law. From his political ascendancy, this daring popular leader might have chosen any one of them for himself; but as, for private reasons, he preferred the "cushion of the Common Pleas," Rolle was promoted to be Chief Justice of the King's Bench.*

On the 15th of November, 1648, the Lords Commissioners of the Great Seal went into that court, and a writ which they had sealed was read, whereby "Charles I., by the grace of God of Great Britain, France, and Ireland King [then a prisoner in Carisbrook Castle], assigned his trusty and well-beloved Henry Rolle to hold pleas before him," &c. It would have been very curious to read the orations delivered on this occasion, but the only further account we have of the ceremony is by Lord Commissioner Whitelock, who merely says, "The Commissioners of the Great Seal went into the King's Bench, where we sat in the middle, the Judges sitting on each side of us, and there we did swear the Lord Chief Justice of that Court, Judge Rolles; and Sir Thomas Widdrington (my brother commissioner) made a very learned speech to him." †

Rolle had long been kept ignorant of the determination to bring the King to an open trial. Highly disapproving of this proceeding, he refused not only to preside at it, but to allow his name to be introduced into the ordinance for creating the High Court of Justice. The Lords having rejected the ordinance, and thereupon having been voted "useless," he was greatly alarmed at the coming crisis, though desirous that measures should be taken to

* "1648. Whereas Mr. Justice Rolle is ordained by both Houses of Parliament to be Ch. J. of the King's Bench, who is now by letters patent one of the Justices of that Court (*quamdiù se bene gesserit*), the Lords and Commons do ordain, That, to the intent he may be constituted Ch. Justice according to the said ordinance, the said Mr. Justice Rolle be desired to surrender the said letters patents; which the Commissioners of the Great Seal are hereby ordered and authorised to accept, and immediately thereupon to constitute him Chief Justice, according to the said ordinance, without any supersedeas to his said letters patents."—*Nov.* 13., 10 *Lords' Journals*, 587.

† Mem. 343. 349.; Styles, 340.

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A.D. 1649.

ward off anarchy. On the 11th of January, 1648-9, Whitelock makes this entry: — "A visit to Lord Chief Justice Rolles, a wise and learned man. He seemed much to scruple the casting off of the Lords, and was troubled at it. Yet he greatly encouraged me to attend the House of Commons, notwithstanding the present force upon them, which could not dispense with their attendance and performance of their duty who had no force upon them in particular."*

His conduct on the execution of Charles I.

When the bloody catastrophe had been consummated, and an ordinance had passed "for abolishing kingship as unnecessary, burthensome, and dangerous to the liberty, safety, and public interest of the people of this nation," Rolle was again thrown into deep perplexity; but, upon the whole, he deemed it the part of a good citizen to submit to the supreme power established in the state, and he, together with five other judges, agreed to assist in the administration of justice under the "Keepers of the Liberties of England." To guard against the wild schemes then agitated, they required an assurance "that the fundamental laws should not be abolished." In consequence, the fundamental laws of England were preserved; many most important reforms were introduced into them, — and other improvements were proposed, which, after being forgotten for near two centuries, we have adopted in the reign of Queen Victoria.†

He is a member of the Council of State.

Rolle, feeling that the deliberations of the executive government could not be beneficially carried on without the presence of some one well skilled in the law, and deeming it essential that, at this time, the preponderance of the military chiefs should have some counterpoise, agreed to accept a seat in the Council of State, and he continued to attend its meetings till it was dissolved by Cromwell, together with the Long Parliament.‡

* Mem. 368. In anticipation of the King's death, there was a grand consultation the same day with respect to the words to be substituted for *Carolus Dei gratia*, &c.; and it was at last agreed to substitute "The Keepers of the Liberties of England." The style continued till Oliver was made Protector.

† One of them has still been successfully resisted by prejudice and selfishness — the establishment of a "General Register of Deeds affecting Real Property:" but this cannot be much longer deferred. Whitelock, 378.

‡ Whitelock, 441. 448.

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A.D. 1654.

He was no longer in Cromwell's confidence; and, without taking any prominent political part, or caballing with the Protector's enemies, he testified his strong dislike of the arbitrary government then established. When the free parliament was called in 1654, he was returned as one of the members for Devonshire; and he several times advised the House of Commons on juridical questions with admired calmness and dignity. Here, however, he was in danger of being overpowered by loquacity, pertness, and ignorance; and it was with much reluctance that he ever gave his attendance.* His delight was to preside as a magistrate, and both in civil and criminal courts he was allowed to be unrivalled.

Privilege of Parliament: Capt. Streather's Case.

The questions of civil right which he determined have become obsolete; but several questions of constitutional law came before him which must always be interesting. Captain Streather, a zealous republican, setting at defiance the usurped power of Cromwell, was committed to prison under two warrants, one by the Council of State, and the other by the House of Commons — neither of them specifying the offence with which he was charged. Thereupon he sued out a *habeas corpus* in the UPPER BENCH, and prayed that he might be discharged on the ground that both warrants were illegal. Rolle, C. J., held the first warrant to be void, in spite of decisions to the contrary under the monarchy; but laid down a rule, which has been followed ever since, that parliamentary commitments cannot be challenged in a court of law: —

"Mr. Streather," said he, "one must be above another, and the inferior must submit to the superior, and in all justice an inferior court cannot control what the parliament does: if the parliament should do one thing, and we do the contrary here, things would run round; we must submit to the legislative power; for if we should free you, and they should commit you again, why here would be no end, and there must be an end in all things. We may call inferior courts to account why they do imprison this or that man against the known laws of the land."

Captain Streather was remanded; but, the parliament being dissolved, he sued out another *habeas corpus*, when Prideaux,

* See Barton's Diary; 3 Parl. Hist. 1428—1471.

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the Attorney General for the Commonwealth, contended that the Court had no power to discharge him:—

A. D. 1654.

Rolle, C. J.: "We examine not the orders of parliament; the question is, whether the order doth now continue? and I conceive it is determined by the dissolution of the parliament, and so it would have done by a prorogation. Let the prisoner be set at liberty." *

Trial of Don Pantaleon Sa.

The most interesting case which came before him was that of Don Pantaleon Sa. This nobleman, who was a knight of Malta, had accompanied his brother, the Portuguese ambassador, on a mission to London to negotiate a treaty with the Commonwealth of England. Having received some supposed affront in the New Exchange in the Strand †, he came to this quarter the following day at the head of an armed band, wantonly attacked the English who were there gathered together, and with a pistol, which he deliberately fired, shot dead an English gentleman who was casually passing by. He then took shelter in his brother's house, and claimed the right of remaining there as in a place of sanctuary. But he was seized, with several of his accomplices, and carried before Lord Chief Justice Rolle; who, exercising the same functions as his predecessors, acted like a modern police magistrate in taking preliminary examinations, granting warrants of commitment, and directing prosecutions to be instituted. He ordered these offenders to be imprisoned in Newgate, and brought to trial for murder. Strong representations were made by the Portuguese government that this proceeding was a violation of the law of nations; but, upon the advice of Rolle, Cromwell was firm in his determination that the blood of an Englishman should be avenged, so that the English name might be respected all over the world.

July 5.

A special commission of *oyer and terminer* was issued to try the case, Chief Justice Rolle being at the head of it, assisted by four doctors of the civil law. Don Pantaleon and three of his accomplices were jointly indicted for the murder. He pleaded, in abatement to the jurisdiction of the Court, —

* 5 St. Tr. 386.; Styles, 415.; Lord Campbell's Speeches, 238.

† Afterwards called "Exeter Change," now removed as a nuisance.

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A.D. 1654.

"1st, that he was a foreign ambassador; and 2dly, that he was secretary to a foreign ambassador when the supposed offence was committed, and at the time of the arraignment." The only proof offered in support of the first plea was a letter to him from the King of Portugal, intimating an intention to make him ambassador in England when his brother, the present ambassador, should be recalled. The fact alleged in the second plea was not disputed; but the counsel for the prosecution strongly argued, that an ambassador, and, at all events, the attendants and servants of an ambassador, are liable to be tried by the municipal courts for any offence committed against the law of nature or the law of God, in the country where they have forfeited their privilege.

Rolle, C. J.: "We are not called upon to decide in this case whether a foreign ambassador is exempted from the jurisdiction of our common law courts, if he commits an offence contrary to the law of God and punishable with death if committed by an English subject. A foreign ambassador certainly is not liable for any infraction of the mere municipal laws of that nation wherein he is to exercise his functions. If he makes an ill use of his character, he may be sent home and accused before his own master, who is bound to punish him or avow himself the accomplice of his crimes. But great doubts have been entertained whether this exemption extends to crimes which are *mala in se*, and whether a distinction may be made among crimes *mala in se*, so as to take away the exemption only in regard to crimes more particularly dangerous and atrocious? Some authorities say that if an ambassador commits any offence against the law of reason and nature, he shall lose his privilege; while others say, that although, if an ambassador conspires the death of the king in whose land he is, he may be condemned and executed for treason, if he commits any other species of treason he must be sent to his own kingdom. It may be urged that to the natural universal rule of justice, ambassadors as well as other men are subject in all countries; and consequently it is reasonable that wherever they transgress it, there they shall be liable to make atonement. But, on the other hand, it may be thought that the security of ambassadors is of more importance than the punishment of a particular crime; and the judgment of the Romans upon the ambassadors of Tarquin may be fitly followed, who were sent back unpunished when detected in committing acts amounting to

treason against the state, upon which Livy observes, 'Et quamquam visi sunt commisisse, et hostium loco essent, JUS TAMEN GENTIUM VALUIT.' Here, however, as I before remarked, the question does not arise; for, upon the evidence, the prisoner Don Pantaleon Sa is no ambassador. He does not represent the King of Portugal to our Commonwealth; and the very letter which he produces, proves that his brother alone is in that capacity, as it only expresses a conditional intention of appointing him ambassador at a future time. What we have to consider therefore is the nature and extent of privilege he enjoys as being in the employment of the ambassador. No authority has been cited to prove the existence of the exemption contended for, and we can only consider how it stands upon principle. Is it necessary to the due carrying on of diplomatic intercourse between independent nations? I clearly think that it is not, and here there is no balance between the convenience and the mischief of the exemption claimed. It may be necessary that the persons of the secretaries and other servants of ambassadors should be privileged from civil process, and little inconvenience follows from exempting them; but although it may be essential that the ambassador himself should not be tried for crimes in the country to which he is accredited, he may still represent his sovereign and carry on his negotiations after one in his service has been apprehended for a crime; and what a frightful condition we should be in, if the doctrine were laid down that all who are in the employment of a foreign ambassador in England may rob, ravish, and murder with impunity! I am therefore clearly of opinion that the prisoner Don Pantaleon Sa must plead to this indictment.* As yet we are bound to consider him innocent, and we shall all heartily join in the prayer that 'God may send him a good deliverance.'"

The three civilians expressed their concurrence: the prisoner pleaded not guilty, along with the others joined in the indictment; and a jury *de medietate linguæ*, half English and half foreigners, was impanneled to try them.

Don Pantaleon Sa then prayed that he might have the assistance of counsel in conducting his defence on the merits: —

Rolle, C. J.: "By our rules of proceeding this may not be: On questions of law only, are persons tried for felony to have the assistance of counsel. With respect to facts they are supposed to be competent to conduct their own defence, and in this case you shall

* See Vattel, b. 4. c. 7.

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find that we the Judges stand equal between you and the Commonwealth."

The trial then proceeded, and was conducted with great impartiality and regularity.* A number of witnesses were examined, who clearly proved that the attack made by the prisoners at the New Exchange was premeditated and unprovoked; that Mr. Greneway, a gentleman of Gray's Inn, son to the Lady Greneway, was there with his sister and a gentlewoman whom he was to have married; that the word "*Safa*" being given, which was the word when the Portuguese were to fall on, without any affront being offered to them, one of them shot Mr. Greneway dead with a pistol; that a number of other Englishmen were dangerously wounded; that Don Pantaleon Sa was the leader of the insurgents; and that the other prisoners were armed, and took an active part in the affray.

The jury found all the prisoners *guilty*, and "Lord Chief Justice Rolle sentenced them to be hanged." Unfortunately, no part of his address to them in passing sentence is preserved.

Great interest was made to save them, and protests were presented not only by the Portuguese government, but by several other foreign ambassadors, who were alarmed by the thought of such a precedent; but Cromwell, after taking the opinion of Rolle and the other judges, remained firm. Determined that the principal offender should suffer, and thinking that one victim would sufficiently vindicate the national honour, he was a good deal perplexed respecting the manner of dealing with the others, for the "Instrument of Government," under which he now professed to act, gave him no power to pardon in cases of

* During the Commonwealth, criminal procedure was greatly improved. Down to the breaking out of the civil war, trials for felony and treason were conducted without any regard to rules of evidence, and written depositions or confessions of accomplices were admitted without scruple. But, through the instrumentality of the Commonwealth judges, the rule was laid down that no evidence could be received against prisoners except that of witnesses confronted with them and sworn. The defect of depriving them of the assistance of counsel, which continued near two centuries longer, had then been very nearly remedied; for Lord Commissioner Whitelock said, "I confess I cannot answer the objection that for a trespass of 6*d.* value a man may have a counsellor-at-law to plead for him, but where his life and posterity are concerned he is not admitted this privilege. A law to reform this I think would be just, and give right to the people." — *Mem.*, Nov. 1649.

murder.* In doing what he thought substantially right, he did not long regard such formalities. "On the 10th of July the Portugal ambassador's brother was conveyed from Newgate to Tower Hill in a coach and six horses, in mourning, with divers of his brother's retinue with him. On the scaffold he spake something to those who understood him, in excuse of his offence, laying the blame of the quarrel and of the murder upon the English. After a few private words and passages of popish devotion with his confessor, he gave him his beads and crucifix, laid his head on the block, and it was chopt off at two blows. The execution of the others was stayed, and, without any formal pardon, after a few months' imprisonment they were set at liberty. The very day after the execution of Don Pantaleon Sa, articles of peace with Portugal were signed, and the whole affair greatly exalted the fame of the English nation all over Europe."†

Chief Justice Rolle had refused to sit on the trial of royalists, but he continued to perform the usual duties of his office, and, soon after, he went the Western Circuit with one of his *puisnies*. While holding the assizes at Salisbury, he was in the greatest danger of coming to a violent end. Penruddock, at the head of a band of several hundred cavaliers, suddenly got possession of the city. Some of the most unruly, without his knowledge, seized Chief Justice Rolle and his brother judge, who were then actually in court in their robes, and required them to order the sheriff to proclaim Charles II., meaning after the proclamation "to cause them all three to be hanged, who (says Lord Clarendon) were half dead already." They refused, and the threat was about to be executed in good earnest; but many country gentlemen protested against it, and Penruddock dismissed the Judges, having taken their commissions from them, and desired them to "remember on another occasion to whom they owed their

Chief Justice Rolle, when sitting at the assizes in, danger of being hanged.

* "Art. III.—All writs, &c., which now run in the name and style of '*The Keepers of the Liberties of England*,' shall run in the name and style of 'THE LORD PROTECTOR,' from whom, for the future, shall be derived all magistracy and honours in these three nations; and shall have the power of pardon, except in cases of murder and treason."

† Rebellion, iii. 746.; 5 St. Tr. 462—518.

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lives." They were still resolved to hang the sheriff, "who positively, though humbly and with many tears, refused to proclaim the King;" but he contrived to make his escape. It so happened that in a few days this insurrection was quelled, and the greatest number of the insurgents, being taken prisoners, were lodged in Salisbury gaol. Orders thereupon came down from London to Chief Justice Rolle, requiring him to try them for high treason; but he returned to town without trying any of them, saying that "he much doubted whether they had done any thing which amounted to treason; and that at any rate he was unfit to give judgment in this case, wherein he might be considered a party concerned." *

He refuses to try the royalist insurgents.

He was now on very bad terms with the Protector, who imitated almost every act of arbitrary power which he had formerly reprobated. After all that had been said about the levying of taxes without authority of Parliament, he had, by his own authority alone, imposed a tax upon the importation of goods. Mr. George Cony, a merchant of London — another Hampden — brought an action to recover back a sum of money which the collector had extorted from him under pretence of this tax. Cromwell at first tried to cajole him into submission, and then committed him to prison. Here we have the counterpart of "*Darnel's Case*," † for a writ of *habeas corpus* was sued out, and the validity of the commitment was debated. The following is the amusing conclusion to the story, as related by Lord Clarendon: —

Cony's Case.

"Maynard, who was of counsel with the prisoner, demanded his liberty with great confidence, both upon the illegality of the commitment and the illegality of the imposition. The Judges could not maintain or defend either, and plainly enough declared what their sentence would be; therefore the Protector's attorney required a farther day to answer what had been urged. Before that day, Maynard was committed to the Tower for presuming to question or make doubt of his authority, and the Judges were sent for and severely reprehended for suffering that licence. When they, with all humility, mentioned the law and MAGNA CHARTA, Cromwell told them, with words of contempt and derision, 'their

* Rebellion, iii. 845.; Wood's Ath. iv. 417. † Ante, p. 382.

*Magna F***** should not control his actions, which he knew were for the safety of the commonwealth.' He asked them, 'who made them Judges? — whether they had any authority to sit there but what he gave them? — and if his authority were at an end, they knew well enough what would become of themselves; and therefore advised them to be more tender of that which could only preserve them,' and so dismissed them with caution 'that they should not suffer the lawyers to prate what it would not become them to hear.'" *

A.D. 1655. Cromwell's respect for Magna Charta.

It is not true, as has been sometimes said, that, "in *Stuart fashion,* Rolle was actually dismissed from his office;" but he thought it very necessary for his own dignity that he should withdraw. "In the mean time," says Ludlow, "upon consideration that his continuance in that station was like to ensnare him more and more, he desired, by a letter to Cromwell, to have his *Quietus;* and Serjeant Glyn was appointed to succeed him in his employment, as a fitter instrument to carry on the designs on foot." †

Chief Justice Rolle resigns.

June 5.

He retired to a country-house he had purchased, at Shapwick, near Glastonbury, in Somersetshire; and, after languishing a year, expired there in the sixty-eighth year of his age.

His death.

He was buried in a little parish-church in the neighbourhood, and no monument was erected to his memory; but he continues to be reverentially remembered in our profession by his labours and by his virtues. Every lawyer's library contains Reports by him of "Divers Cases in the Court of King's Bench, in the time of King James I.," remarkable for their clearness, precision, and accuracy; and his "Abridgment of the Common Law," the fruit of his early industry. Although he lives as an author, it is as a great magistrate that he is now venerated. And he really seems to have had

* Rebellion, iii. 985.. The noble historian adds, with his usual candour, — "Thus he subdued a spirit which had been often troublesome to the most sovereign power, and made Westminster Hall as subservient and obedient to his commands as any of the rest of his quarters. In all other matters which did not concern the life of his jurisdiction he seemed to have great reverence for the law, rarely interposing between party and party."

† Mem. p. 201.; Styles, 452. In a debate in the House of Commons in March, 1659, Chaloner, during the debate, said, "Judge Rolles, learned and honest as any, was shuffled out of his place by the Lord Protector, and another put in his place."—Burton's Diary.

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His singular ability as a Judge.

a *genius* for judging causes; that is to say, that he did this better than any thing else in the world, — better than any one of his admirers would have thought possible, — and as well as any of those who have most distinguished themselves in the same line. *Laudatus a laudato;* — his principal panegyrist is Sir Matthew Hale, who, after bestowing warm praise upon him as an advocate, thus proceeds: —

"Although when he was at the bar he exceeded most others, yet when he came to the exercise of judicature his parts, learning, prudence, dexterity, and judgment were more conspicuous. He was a patient, attentive, and observing hearer, and was content to bear with some impertinences, rather than lose anything that might discover the truth or justice of any cause. He ever carried on as well his search and examination, as his directions and decisions, with admirable steadiness, evenness, and clearness; great experience rendered business easy and familiar to him, so that he gave convenient despatch, yet without precipitancy or surprise. In short, he was a person of great learning and experience in the common law, profound judgment, singular prudence, great moderation, justice, and integrity." *

It seems that he was liable to the imputation of being too fond of money. Hood thus concludes his short notice of him: —

"The great men of the law living in those times used to say that this Henry Rolle was a *just* man, and that Mathew Hale was a *good* man: the former was by nature penurious, and his wife made him worse; the other, on the contrary, being wonderfully charitable and open-handed." †

The Chief Justice left numerous descendants. The late Lord Rolle was the head of the family which, if we may trust to the pedigree prefixed to the ROLLIAD, was descended from the ancient Duke Rollo of Normandy, and the wife of a Saxon drummer. ‡

* Preface to Rolle's Abridgment by Sir Matthew Hale.

† Athenæ, iv. 418.

‡ A doubt is stated to have existed whether, in the time of the wars of York and Lancaster, although the Rolles were represented by our author to have been sheriffs of the county ("Sheriffi Devonienses Rolli fuerunt"), the head of the house was not a sheriff's officer ("Bailivus ipse potius quam Sheriffus"). But the Chief Justice certainly vindicated the glory of his race. See "Short Account of the Family of the Rollos, now Rolles, faithfully extracted from the Records of the Heralds' Office."

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Chief Justice Glyn.

Rolle's successor as Chief Justice of the Upper Bench was a man of very different character; — able, and well-versed in his profession, but eager to advance himself, — fond of political intrigue, busy, bustling, and unscrupulous. JOHN GLYN was born at Glyn Llynon, in Caernarvonshire, and was the younger son of a respectable family which had long been seated there. He had an excellent education, being bred at Westminster, Oxford, and Lincoln's Inn. He was called to the bar in 1630; and, rapidly getting into practice, was, while a very young man, made High Steward of Westminster, and Recorder of London. He associated himself with the patriots from ambition rather than principle, and made himself popular by declaring at clubs and coffee-houses against the arbitrary acts of the Government. In consequence, when the year 1640 arrived and it became indispensably necessary to apply to the House of Commons for supplies, he was elected representative for the city of Westminster, first in the "Short Parliament," and then in the "Long Parliament." Thus his career is described by Wood: — "He was appointed one of those doughty champions to bait the most noble and worthy Thomas Earl of Strafford, in order to bring him to the block*; which being done he showed himself a great enemy to the bishops and their functions, a zealous covenanter, a busy man in the Assembly of Divines — and what not? — to promote his interest and gain wealth."†

His early career.

His speech in the Long Parliament. Jan. 1642.

There is only one parliamentary speech of his preserved. This he made in the committee of the House of Commons which met at Guildhall after Charles's insane attempt to arrest the five members with his own hand. The orator, in defence of parliamentary privilege so grossly violated, inveighs bitterly against all implicated in the transaction; and he was the first to threaten personal violence to the King himself. According to a report of his speech prepared by himself, he thus denounced vengeance: —

"I conceive, sir, did these persons but remember the many precedents yet extant of the just and deserved punishments inflicted

* He drew, and delivered to the Lords, the replication of the Commons to Lord Strafford's plea. — Com. Journ.

† Athenæ, iii. 752.; 2 Parl. Hist. 1023.

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by former parliaments upon such miscreants, — as witness the Archbishop of York, the Earl of Suffolk, Chief Justice Tresilian, and others condemned to death for the like offence in the reign of Richard II., — they would have prejudged that the like danger would fall upon themselves for their evil actions. Nay, sir, these men, if they had considered with themselves the just judgments of God that have immediately lighted upon the necks of such as have been the troublers of kingdoms whereof they have been members, as recorded in sacred writ, they would have laid their hands upon their mouths and hearts when they went about to speak or do anything tending to the dishonour of Almighty God."

Glyn at this time was a strong Presbyterian, and so remained till the Independents had completely gained the ascendency. Taking the covenant, he assisted in framing the "Directory for Public Worship," which superseded the *Liturgy;* and he was as strong against allowing private judgment in matters of religion as any Papist. Meanwhile, in the language then used by his opponents, "he was very diligent in feathering his own nest." He obtained a sinecure in the Petty-Bag Office, worth 1000*l.* a year; and other places, which he could not hold himself, he procured for his

A.D. 1646.

creatures and kindred. The army, however, viewed with envy the manner in which, while *they* were encountering all sorts of dangers and privations, the members of the House of Commons were enriching themselves; and Cromwell, taking advantage of this feeling, brought in his famous "Self-denying Ordinance," — the foundation of his subsequent greatness. Glyn, with Hollis and Stapleton, his close allies, strenuously opposed a measure likely to be so detrimental to themselves and to their party. "These were all men of parts, interest, and signal courage, and did not only heartily abhor the intentions which they discerned the army to have, and that it was wholly to be disposed according to the designs of Cromwell, but had likewise declared animosities against the persons of the most active and powerful officers." * They had a considerable majority in the House

* Rebellion, iii. 87. By Glyn's advice, Hollis sent Ireton a challenge, and, the saintly soldier answering that it was against his conscience to fight a duel, the challenger pulled his nose, observing, "If your conscience keeps you from giving satisfaction, it should keep you from offering affronts." This affair greatly exasperated the differences between the Presbyterians and Independents.

of Commons, and upon a peaceable division the Ordinance must have been thrown out. A council of officers, therefore, on Cromwell's suggestion, preferred an impeachment for high treason against Glyn and ten other members of the House of Commons, and insisted that they should be immediately sequestered and imprisoned. The demand was at first resisted, on the ground that the accusation was general; but it was answered, that, on a similar accusation, the Earl of Strafford had been committed to the Tower by the House of Lords,—and, ere long, Glyn was in the same cell which that great state offender had occupied. The self-denying Ordinance having passed, he was deprived of all his employments, including even the Recordership of the City of London.*

He is impeached for opposing the Self-denying Ordinance.

Glyn was a man in every political revolution to side with the victorious party, and to contrive to gain the favour of those who had beaten him. We are not informed how he made advances to the Independents on his liberation, but, soon after, he was allowed to resume his seat in the House of Commons as member for Westminster; and when negotiations were going on for a settlement with the King, now a prisoner in the Isle of Wight, we find him in the confidential situation of one of the commissioners on the part of the Parliament. He was soon after raised to the degree of Serjeant-at-law, being one of those on whom this honour was conferred by order of the House of Commons.

He is reconciled to Cromwell. A.D. 1648.

Glyn was too cautious a man to take any part in the King's trial; and he remained very quiet for several years, following his profession, and watching the course of events. But when the Protectorate was firmly established, he professed to be a zealous supporter of the plan for putting the royal diadem on the head of the Protector.

In Cromwell's reformed parliament he was returned for the county of Caernarvon, and, being a member of the committee appointed to remove the objections made by his Highness to accept the title of OLIVER I., which was offered to him, he not only took an active part in the conferences at Whitehall, but published a pamphlet, entitled "Monarchy

* Rebellion, ii. 907., iii. 91.; Athenæ, iii. 753.

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asserted to be the best, most ancient, and legal form of government."

A.D. 1654. He presides at the trial of Penruddock.

When Chief Justice Rolle refused to try Penruddock and the royalists in the West who had saved his life, and Sir Mathew Hale, then a Judge of the Common Pleas, had excused himself from this service, Glyn was sent down to Salisbury along with Serjeant Maynard to dispose of them; and their services on this occasion were celebrated in the well-known lines of Hudibras: —

> "Was not the King, by proclamation,
> Declared a rebel o'er all the nation?
> Did not the learned Glyn and Maynard,
> To make good subjects traitors, strain hard?"

We have a very full account of the trial by Penruddock himself, from which it would appear that Glyn treated him with extreme harshness and insolence. The indictment was for high treason in levying war against the Lord Protector. The prisoner argued that "there could be no treason unless by common law or statute law, but this is neither on the common law or the statute; *ergo*, no treason."

Glyn: "Sir, you are peremptory; you strike at the Government; you will fare never a whit the better for this speech." *Penruddock:* "Sir, if I speak anything which grates upon the present Government, I may confidently expect your pardon; my life is as dear to me as this Government can be to any of you. The holy prophet David, when he was in danger of his life, feigned himself mad, and the spittle hung upon his beard. You may easily therefore excuse my imperfections. The 'Protector' is unknown to the common law; and if there be any statute against which I have offended, let it be read. My actions were for the King, and I well remember Bracton saith, 'Rex non habet superiorem nisi Deum.' You shall also find that whoever shall refuse to aid the King, when war is levied against him or against any that keep the King from his just rights, offends the law, and is thereby guilty of treason; and yet you tell me of a statute which makes my adhering to my King according to law to be high treason. Pray let it be read."

The only answer he received was, "Sir, you have not behaved yourself so as to have such a favour from the Court." Evidence of the insurrection being then given, and of the taking of Salisbury in the King's name while the Protector's

judges were holding the assizes there, Penruddock delivered a very eloquent speech to the jury, which he gives at full length: —

"This being done," he says, "Serjeant Glyn, after a most bitter and nonsensical speech, gave sentence against me, viz. to be drawn, hanged, and quartered: I observe treason in this age to be an *individuum vagum*, like the wind in the Gospel which bloweth where it listeth; for that shall be treason in me to-day, which shall be none in another to-morrow, as it pleaseth Mr. Attorney."

He was a very pious as well as a very brave man, and as he was ascending the scaffold he said beautifully, "This I hope will prove to be like Jacob's ladder; though the feet of it rest on earth, yet I doubt not but the top of it reacheth to heaven."*

He is made Chief Justice. June 15. 1655.

Rolle being driven, not long after, to resign the Chief Justiceship of the Upper Bench, Glyn was appointed to succeed him. His installation took place with great ceremony, when L'Isle, Lord Commissioner of the Great Seal, "did make a learned speech, wherein he spoke much in commendation of the good government (as he termed it) that they then lived under." †

Glyn filled this office till the eve of the Restoration, a period of nearly five years, during which he discharged its judicial duties very creditably. He was an extremely good lawyer, he was very assiduous in private causes, he was very impartial, and he could even put on a show of independence between the Protector and the subject.

His chief reporter is Styles, who, being obliged by an ordinance of the House of Commons to abjure the Norman French, thus laments the hardship imposed upon him: —

May, 1658.

"I have made these reports speak English, not that I believe they will be thereby generally more useful, for I have been always, and yet am, of opinion that that part of the common law which is

* 5 St. Tr. 767—790.

† Athenæ, iii. 753. The following is from Styles: — "Memdum. — Trin. Term. 1655. Justice Aske sat alone in the Court of Upper Bench, being then the sole Judge there, the late Lord Chief Justice Rolle having surrendered his patent. Afterwards John Glyn, his Highness the Lord Protector's Serjeant-at-law, took his place of Lord Chief Justice of England in this court; and the Lord Lisle, one of the Lords Commissioners of the Great Seal, made a speech unto him according to the custom." — *Styles*, 452.

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in English, hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age, who, though they be as confusedly different in their minds and judgments as the builders of Babel were in their languages, yet do think it vain, if not impious, to speak or understand more than their own mother tongue."

Points decided by Chief Justice Glyn.

While in St. Stephen's Chapel (where the House of Commons still met) political convulsions were happening which changed the aspect of the world, I do not find any more important point decided by the UPPER BENCH in Westminster Hall than the following: —

"Action on the case for these words 'Helena (meaning the plaintiff) is a great witch.' Verdict for the plaintiff, with damages. Motion in arrest of judgment, and, by the unanimous opinion of all the justices, judgment was arrested, because the words only indicated that the plaintiff was a witch, without alleging that she had bewitched any person or any thing; and it not being punishable to be a witch without actually exercising the black art, it is not actionable simply to impute the power of witchcraft to another." *

The next reporter of the UPPER BENCH was Siderfin, who, not publishing till after the Restoration, availed himself of the recovered privilege of using the Norman French. The following is a fair specimen of the decisions which he records: —

"Le defendant dit ceux scandalous parols del plaintiff. 'He hath got M. N. with child.' Motion pour arrester le judgment pour ceo que ceux parols ne sont actionables sans alleging que M. N. ne feut sa feme. Mais] per Glyn, C. J.: Les parols sont actionables car il ne gist dans la bouch del defendant a dire que le plaintiff et M. N. etoient baron et feme." †

On several occasions when writs of *habeas corpus* were moved for in the UPPER BENCH, Glyn intimated with some reluctance that, sitting there, he must declare the law

* Styles, ii. So it is held not actionable to say "Mary is a witch, for she has bewitched me," the context showing that he meant she had made the defendant fall in love with her: any more than to say "you are a thief, for you have stolen my heart;" or, "you have committed murder, for your beauty has for ever murdered my peace of mind."

† Siderfin, ii. 17.

as it had been handed down to him; whereupon (probably by his advice in the Council of State) the arbitrary acts deemed necessary were carried through by the agency of the "Major Generals" and the "High Court of Justice."

Trial of Sindercome for conspiring to assassinate the Protector. Jan. 1658.

There was one treason trial before the UPPER BENCH while Glyn presided there; that of Sindercome, who had engaged in a plot to assassinate the Lord Protector. As he was certainly guilty of a crime revolting to all Englishmen, it was thought that a jury might safely be trusted with the case, instead of referring it to any extraordinary tribunal.

It is curious to a lawyer to observe that the indictment is framed after the precedents on stat. 25 Edward III., for "compassing and imagining the death of the Lord Protector." The overt act charged was hiring a room in Westminster, fitting it with guns, harquebusses, and pistols charged with leaden bullets and iron slugs, to shoot, kill, and murder him. The facts being proved very clearly, Lord Chief Justice Glyn thus met the objection that in the statute of Edward III. there is no mention of a "Protector:"—

"By the common law, to compass or imagine the death of the chief magistrate of the land, by what name soever he was called, whether *Lord Protector* or otherwise, is high treason; he being the spring of justice, in whose name all writs run, all commissions and grants are made: the statute 25 Edw. III. did only declare what the common law before was, and introduced no new law."

The jury, consisting of very respectable men, having, without difficulty, found a verdict of *guilty*, the ancient sentence in cases of treason, with all its frightful particulars, was pronounced; but this Sindercome disappointed, by taking poison the night before the day fixed for his execution.*

Dec. 17. 1656.

Glyn was member for Caernarvonshire in Cromwell's third parliament, and assisted the House of Commons with his legal advice. In the proceedings against Nayler the Quaker, he gave it as his opinion "that, upon a simple commitment by the House of Commons for a contempt, at the end of the session the party committed was entitled on a *habeas corpus* to be discharged; but if the House were to proceed judi-

* 5 St. Tr. 841—872.

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cially, and, after conviction, sentence him to imprisonment for a time certain, no inferior court could interfere to relieve him."*

The Chief Justice continued in high favour with Cromwell, and again made an effort to induce him to become King.† This having failed, and the House of Lords being restored, he was made a peer,—he and his wife being called Lord and Lady Glyn. ‡

Glyn is made a peer.

On the accession of Richard his patent as Chief Justice of the Upper Bench was renewed, and he took his seat as a peer in the new parliament, but made no effort to ingratiate himself with the military usurpation which followed, foreseeing that it would be shortlived. On the restoration of the Rump he again took his seat as member for Westminster, and affected a zeal for the Presbyterians, who were now the dominant party.

Jan. 1660.

As Monk's army approached from the north, he had a very shrewd guess at the intentions of "honest George," and thought it did not become him to act longer as a Judge under a usurped authority. He therefore sent in his resignation of the office of Chief Justice of the Upper Bench, and strenuously assisted in the recall of the exiled royal family. He zealously joined in the vote for the final dissolution of the Long Parliament; and, being returned to the Convention Parliament as member for the county of Caernarvon §, he opposed the motion made by Sir Matthew Hale for requiring conditions from Charles II. In short, he was as loyal as any Cavalier. It seems rather strange that he now printed the speech he had made to induce Oliver to accept the crown, in the shape of a pamphlet entitled "Monarchy asserted to be the best, most ancient, and legal form of government; in a conference held at Whitehall with the Lord Protector and a Committee of Parliament, April, 1650." His object probably was to prove that he had always been a royalist in his heart. Wood asserts that, in spite of this newborn zeal, Glyn was so obnoxious on account of what he had done when an ultra-republican, that he would have been

Glyn resigns his office and assists in the Restoration.

* Burton's Diary.
† 3 Parl. Hist. 1498.
‡ 3 Parl. Hist. 1518.
§ 4 Parl. Hist. 8.

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excepted from the indemnity, and, although not directly concerned in the King's death, that he would have been brought to trial for high treason, like Sir Harry Vane the younger, if he had not given a bribe to Lord Chancellor Clarendon.* However this may be, the ex-Chief Justice was quickly as great a favourite with Charles II. as he had ever been with Oliver. He was not only pardoned, but created King's Ancient Serjeant; and, kneeling to kiss the hand of his legitimate Sovereign, rose SIR JOHN GLYN, KNIGHT. He was again returned for Caernarvonshire on the dissolution of the Convention Parliament, and he supported all the measures of the Court with indiscriminate zeal. "He departed this mortal life in his house situated in Portugal Row, Lincoln's Inn Fields, near London, on the 15th of November, 1666, and was buried with great solemnity (being accompanied to his grave by three heralds of arms) in his own vault under the altar in the chancel of the church of St. Margaret, within the city of Westminster." †

A.D. 1660. He gains the favour of Charles II.

A.D. 1661.

His death.

The office of Chief Justice of the UPPER BENCH having become vacant by the resignation of Glyn, although the supreme power really was in the hands of Monk, who was approaching London at the head of a large army, the Rump resolved that, for the due administration of the law, a new Chief Justice should be created. Accordingly an order was made, both by the Council of State and by the House of Commons, to confer the office on SIR RICHARD NEWDIGATE; and, as he was regularly installed in it, I must take some notice of him, notwithstanding that the period for which he held it was very brief.

Jan. 1660. Newdigate Chief Justice.

Jan. 17.

He was of a respectable Warwickshire family. He studied at Oxford, and he was called to the bar at Gray's Inn. I find no public notice of him till the year 1644, when he was appointed junior counsel for the Commonwealth in certain state prosecutions which were then going on, having Prynne and Bradshaw for his leaders. I suspect that he was a hard-

His professional career.

* When the Athenæ came out, after Lord Chancellor Clarendon's death, his son sued the author for this calumny in the Vice-Chancellor's Court, and had judgment against him.

† Athenæ, iii. 754.

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headed special pleader, without display or pretension, who, delighted with the smell of old parchment, was indifferent about politics and literature; but who was complete master of his own craft, and who could be relied upon with absolute confidence for drawing an indictment or arguing a demurrer. He never was a member of the House of Commons, neither sitting in the Long Parliament nor in any of the whimsical deliberative assemblies called either by Oliver or Richard.

The next we hear of him is as counsel for Glyn, Hollis, and the rest of the eleven members who were impeached for high treason because they opposed the "Self-denying Ordinance." He drew and signed their answer, which seems to have been a service of some danger, as Whitelock greatly rejoiced in being released from it. The case never came to a hearing, the object being only to frighten the leading Presbyterians — not to hang them.*

He becomes a Judge under Cromwell.

Although opposed to the Government, on account of his high reputation as a lawyer he was called upon, along with Pepys and Wyndham, to become a Judge.† They at first all declined the honour, and, being summoned into the Protector's presence, expressed doubts as to his title, and scruples as to whether they could execute the law under him. Whereupon he said, in wrath, "If you gentlemen of the *red robe* will not execute the law, my *red coats* shall."‡ Out of dread of what might happen either to the state or to themselves, they are said all to have exclaimed, "Make us Judges; we will with pleasure be Judges."

His independant conduct.

Newdigate, in consequence, became a Puisne Justice of the Court of King's Bench, but was too honest long to retain the office. Presiding at the assizes for the county of York, when Colonel Halsey and several other royalists were tried before him for levying war against the Lord Protector, he observed that, "although by 25 Ed. III. it was high treason to levy war against the King, he knew of no statute to extend this to a Lord Protector;" and directed the jury to acquit the prisoners.

* Memorials, 259. † Whitelock, 591.

‡ According to another edition of the story he said, "If I cannot rule by *red gowns* I will rule by *red coats*."

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In consequence, a mandate from the Protector in Council came to the Lords Commissioners of the Great Seal for a *supersedeas* to dismiss him.*

He is dismissed. May 15. 1655.

He returned to the bar, and practised with great success for some years.

Jan. 15. 1660.

He was restored to the bench, as a Puisne Judge, when the Protectorate was abolished, and the government was again carried on in the names of the "Keepers of the Liberties of England."† Two days after, an ordinance passed by which he was constituted "Chief Justice of the Upper Bench." The object was, in the present crisis, to select an individual who could give no offence to any political party, and who must be acceptable to all from his acknowledged learning and integrity.

Jan. 17.

He is superseded at the Restoration. A.D. 1660.

He filled the office with entire satisfaction to the public till the 29th of May following, when, Charles II. making his triumphal entry into London amidst universal rejoicings, the Commonwealth Judges were considered as superseded, and ceased to act.

Sir Robert Pye's Case.

The only case of much importance which came before him was that of Sir Robert Pye, who having been committed to the Tower by the House of Commons, his counsel moved for a *habeas corpus* to discharge him. Ludlow says, "So low were the affairs of the Parliament, and their authority so little regarded, even in Westminster Hall, that Judge Newdigate, demanding of the counsel for the Commonwealth what they had to say why it should not be granted, they answered that they had nothing to say against it: whereupon the Judge, though no enemy to monarchy, yet ashamed to see them so unfaithful to their trust, replied, that if they had nothing to say, he had; for that Sir Robert Pye being committed by an order of the Parliament, an inferior court could not discharge him." ‡

Newdigate had always borne his faculties so meekly that

* Whitelock, 625. † Ib. 678.

‡ Ludlow, p. 321. The following is a different report of the case by Siderfin: — "Sir Ro. Pye et M. Fincher esteant commit al Tower move per lour councel pro Hab. Corp. Et al jour del return ils appiert in court. Et fuit move per lour councel, que ils serra baile avant este longtemps imprison sans ascun prosecution fait vers eux. Et fuit dit per le Court que coment ils fuer' imprison pur suspicion de treason, que ils ne poent deny al eux baile in cas que le counsel del Commonwealth ne voil proceed vers eux; car est le birthright de chascun subject destre try acc. al Ley del terre." — *Sid.* 179.

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A.D. 1660.

in the Act immediately passed "for confirming all writs and process in the names of the Protectors, Oliver and Richard, or of the Keepers of the Liberties of England," * it would have been graceful to have introduced a clause ratifying his appointment, or to have reconstituted him a Judge under the royal great seal now held by the Earl of Clarendon; but he was so little of an intriguer that he was removed from his office with seeming disgrace, while his predecessor, Glyn, who had been instrumental in overturning the monarchy, and had behaved with the utmost harshness to many royalists, was immediately basking in the sunshine of Court favour.

His career after his deposition.

He returned to the bar, and was a second time called to the degree of the coif, along with other serjeants, whose first writs had been issued by the "Lord Protector," or the "Keepers of the Liberties of England." When he saw that there was no chance of his being restored to the bench, and found that he was too old to wrangle with juniors trying to push themselves into notice, he retired into the country and amused himself with rural sports. Still he was not a keen politician, and he associated chiefly with the Cavaliers. By Colonel Halsey, whose life he had saved, he was introduced, in extreme old age, to Charles II., and he was created a baronet. He died on the 14th of October, 1678. On his death-bed he perceived, by the signs of the times, that another revolution was approaching, although no one could then tell whether it would lead to a constitutional monarchy or to a re-establishment of the Commonwealth.†

* 12 Car. II. c. 4.

† See Noble's Family of Cromwell, vol. ii. On the east wall of Harefield Church, in Middlesex, is a monument to Sir Richard Newdigate, with the following inscription: — "M. S. Ricardi Newdegate, servientis ad legem et baronetti, filii natu minimi Joannis Newdegate in agro Warwicensi militis. Natus est 17mo die Septembris A.D. 1602, et post tyrocinium in Academiâ Oxoniensi feliciter inchoatum juris municipalis studio in Graiorum hospitio reliquum temporis impendit; vitam degit animi fortitudine et mirâ æquitate spectabilem; summo candore et morum suavitate ornatus erat, nec minore probitate et prudentiâ. Deplorandis illis inter Carolum primum regem et ordines regni controversiis non omnino admiscuit, nec adduci potuit ut prædiorum regis vel illorum qui ob ejus parte steterunt emptione rem suam contaminaret; sed nobiliore quamvis minùs expedito ad divitias contendebat itinere; indefesso nempe studio et labore, summâque in arduis fori negotiis peritiâ et fide; quibus ita claruit, ut reempto hujus loci manerio, antiquæ suæ familiæ penè collapsæ, atque ex veteri Newdegatorum in Surria prosapia oriundæ, sedi plurima adjecit latifundia, quæ nullæ viduarum lachrymæ nec diri orphanorum gemitus infausto omine polluerunt." — *Lysons' Environs of London*

Chief Justice Newdigate's epitaph.

CHAPTER XIII.

LIFE OF CHIEF JUSTICE OLIVER ST. JOHN.

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I MUST complete my list of Commonwealth Chief Justices with the name of OLIVER ST. JOHN, and I am well pleased with an opportunity of tracing his career and portraying his character. He has been noticed by historians, but he has not occupied the prominent position which is suitable to his merits or his crimes. With the exception of Oliver Cromwell, he had more influence on the events which marked the great constitutional struggle of the 17th century than any leader who appeared on the side of the Parliament. He was the first Englishman who ever seriously planned the establishment of a republican form of government in this country; he adhered resolutely to his purpose through life; and to attain it he took advantage, with consummate skill, of all events as they arose, foreseen and unforeseen, and of the various incongruous propensities and conflicting passions of mankind. When the ancient monarchy had been overturned, he resisted the establishment of tyranny under a new dynasty; and finally, rather than desert his principles, he was willing to spend his old age in exile and penury. At the same time, while he was a distinguished statesman he was an able lawyer, — not like many who have been called to the bar *pro formâ*, and having gone a single circuit have entirely abandoned their profession for politics, but, sounding all the depths of the law, he showed himself worthy to be trusted in the most important causes ever argued before an English tribunal; and he himself for years distributed justice as a great and enlightened magistrate. There were, indeed, dark shades in his character, but these only render it the more worthy of our study.

Glance at the character of Oliver St. John.

It is a curious circumstance that there should be a dispute about the parentage of such a distinguished individual, who

Qu. as to his paternity?

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flourished so recently. Lord Clarendon, who knew him intimately from his youth, who practised with him in the Court of King's Bench, who sat in the House of Commons with him, and who was both associated with him and opposed to him in party strife, repeatedly represents him as illegitimate; and states that he was "a natural son of the house of Bullingbrook."* Lord Bacon's account of his origin is equivocal — calling him "a gentleman as it seems of an ancient house and name."† By genealogists and heralds a legitimate pedigree is assigned to him, deducing his descent in the right male line from William St. John, who came in with the Conqueror; but some of them describe him as the son of Sir John St. John, of Lydiard Tregose in Wiltshire, and others as the son of Sir Oliver St. John of Cagshoe in Bedfordshire, and they differ equally respecting his mother.‡ Lord Clarendon could hardly be mistaken on such a point, and I cannot help suspecting that the contrary assertions proceed from a desire to remove the bar sinister from the shield of a Chief Justice.

His education.

He was born in the latter end of the reign of Queen Elizabeth. To whomsoever he might be related, or by whomsoever begot, he had from nature wonderful power of intellect, and great pains were taken with his education. He received much early kindness from the Earl of Bedford, as well as the Earl of Bolingbroke; and he was brought up with the young Russells and St. Johns who were to support the greatness of these two noble houses.

Some say that he was educated at Catherine Hall, Cambridge, and others at Trinity College, Oxford; but the former statement is much the more probable.§ Although we

* Rebellion, i. 327.

† Works, 429.

‡ See Noble's Memoirs of the Cromwell Family, ii. 16.

§ Fasti, i. 453. At the request of a friend, Dr. Philip Bliss, Principal of St. Mary Hall, and Keeper of the Archives of the University, has, though in vain, made a diligent search for Oliver St. John's matriculation at Oxford. He thus politely prefaces a letter stating the result of his inquiries: "Lord Campbell has a claim on me, and all who have records in their custody, as his work may be considered a valuable contribution to our national biography." He then states, that, after a search of several days, the only St. Johns he can find matriculated from 1570 to 1614, are Oliver St. John of Trinity College, matriculated 20th Dec. 1577, son of John St. John, Esq., being the Lord Deputy of Ireland in 1616, and created Baron Tregoze in 1626, represented by Collins as

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certainly know that he studied law at Lincoln's Inn, the exact dates of his entry, and call to the bar there, are not ascertained, from the defective state of the books of the Society at that period.*

We have ample notices of his appearance and habits soon after he was called to the bar, which describe him as thoughtful and moody, never partaking in youthful amusements, and seldom even allowing his features to relax into a smile. He read much and reflected more. Though a deep lawyer, and almost always to be found at his chambers when he was not attending the courts, he had nothing showy in his manner; and the attorneys ascribed his taciturnity to dulness, so that for a considerable time he had hardly any practice, either on the circuit or in London. But those who were intimately acquainted with him foresaw that he must one day attract general admiration.

His want of success at the bar.

How his attention was first directed to politics is unknown, but it is certain that, from early youth, he was impressed with the notion that the Stuart family was systematically engaged in a plan to subvert public liberty; he saw the mischiefs arising from monopolies, which were still persisted in, notwithstanding the repeated promises to abolish them; and, above all, he was alarmed by the danger of parliaments being entirely discontinued, if the pretension should be acquiesced in of raising money by the exercise of the prerogative. It is supposed that, during a long vacation, he had taken a trip to Holland, and that it was from seeing with his own eyes the respect for property as well as personal liberty, and the comfortable and contented condition of all classes in that

He is a keen republican.

having died in 1630, aged seventy; George St. John, the son of a knight born in the county of Wilts, matriculated of Trinity College April 3. 1601, aged fifteen; and William St. John, the son of an esquire, born in the county of Hants, matriculated of Magdalene College May 8. 1600, aged sixteen. The matriculation records of Cambridge at this period are so defective, that the non-appearance of a name in them affords hardly any argument; and Wood's assertion, that our Oliver was of Catherine Hall, is strongly corroborated by the fact of his having been afterwards Chancellor of the University of Cambridge.

* There are entries respecting an Oliver St. John (without any designation as to parentage) who is stated to have been admitted in 1630, and to have been called to the bar on the 30th of January, 1637(8); but this cannot refer to our Oliver, who must then have been forty years of age, and was well known as a lawyer and a politician.

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country, he was first imbued with a taste for a republican form of government.

A.D. 1615.

However this may be, it is certain that James I., in the interval of parliaments, having made an attempt to raise a tax under the name of a "Benevolence," or compulsory loan which was never to be repaid,—the amount exacted from the supposed lender being assessed by the borrower,—Oliver St. John, still a mere stripling, resolved to stir up resistance to it; and with this view he wrote and published "A Letter to the Mayor of Marlborough," citing the various statutes, from MAGNA CHARTA downwards, by which the imposition was condemned, and denouncing it as contrary to law, reason, and religion. Sir Francis Bacon was then the Attorney General, and impatient to grasp the great seal. That he might recommend himself to the Court, he prosecuted this indiscreet boy in the Star Chamber, for a libel, and had him arrested while the suit was depending. When the hearing of the case came on, he made a speech which might well fix the hatred of tyranny in the breast of the young patriot:—

He is prosecuted in the Star Chamber.

April 29.

"This gentleman," said he, "hath, upon advice, not suddenly by the slip of his tongue—not privately, or in a corner—but publicly—as it were to the face of the King's ministers, slandered and traduced the King our sovereign, the law of the land, the parliament, and infinite particulars of his Majesty's worthy and loving subjects. Nay, the slander is of that nature, that it may seem to interest the people in grief and discontent against the state; whence might have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander, like that the poet speaks of — *Calamosque armare veneno* — a venomous dart that hath both iron and poison." He then at great length justified the Benevolence, and commented bitterly on the alleged libel. Thus he concluded: "Your menace, that 'if there were a Bollingbroke (or I cannot tell what), there were matter for him,' is a very seditious passage. You know well that, howsoever Henry IV.'s act by a secret providence of God prevailed, yet it was but an usurpation; and if it were possible for such a one to be this day, wherewith it seems your dreams are troubled, I do not doubt his end would soon be upon the block, and that he would sooner have the ravens sit upon his head at London Bridge, than the crown at Westminster; and it is not your interlacing with your '*God forbid!*'

that will salve these seditious speeches. If I should say to you, for example, 'Mr. Oliver St. John, if these times were like some former times of King Henry VIII, which *God forbid!* Mr. Oliver St. John, it would cost you your life!' I am sure you would not think this to be a gentle warning, but rather that I incensed the Court against you. And this I would wish both you and all to take heed of — how you speak seditious matter in parables, or by tropes, or examples. There is a thing in an indictment called an *inuendo;* you must beware how you beckon or make signs upon the King in a dangerous sense. As yet, you are graciously and mercifully dealt with." *

After various members of the court had followed in the same strain, supporting the legality of Benevolences, and denouncing as sowers of sedition and traitors all who questioned the right to levy them, a day was appointed for condemning the defendant to punishment, and then hearing him. This was looked forward to with great interest; and Lord Chancellor Ellesmere, who was dying, expressed a wish that the delivery of the sentence might be the last act of his official life. Fine, pillory, and perpetual imprisonment were expected by St. John without dismay.

But, before the day arrived, his prison doors were thrown open to him. He was told that Government dropped the prosecution, in the hope that indulgence would bring him to a right mind, and that the authoritative declaration of the law by the Court of Star Chamber would for ever after prevent attacks on the inalienable prerogatives of the Crown. The real motive for this apparent lenience was never explained. The proceeding had no effect on the obdurate mind of St. John but to make him more cautious. He never forgave the court the first assault, and, hoping before he died to see his country free, he resolved to bide his time.

A.D. 1628. He is a member of Charles I.'s third parliament.

He remained quiet during the rest of this reign and the commencement of the next, but he was returned to the House of Commons as member for the county of Bedford in Charles's third parliament, and thenceforth he was the life and soul of the country party. Still he made no display.

* 2 St. Tr. 899. Bacon was so delighted with this speech, that he sent a copy of it to the King, saying, "I persuade myself I spoke it with more life."

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A.D. 1628.

He was nothing of a rhetorician; he hardly ever spoke in debate, and when he did open his mouth it was only to utter a few pithy sentences. But he met the popular leaders in consultation; he furnished them with precedents, he drew their addresses and resolutions, and he gave them discreet counsel, which they valued and followed.

Although he had been mainly instrumental in carrying the "Petition of Right," and extorting the royal assent to it in due form, and the Court, aware of his influence, would have been well pleased to have punished him after the parliament was dissolved, it was found impossible to include him in the prosecution instituted against Sir John Eliot, Denzil Hollis, and other patriots, for making seditious speeches in parliament.

But he anxiously watched the expedients now adopted to introduce despotism and to reconcile men's minds to the loss of liberty. One of these was to circulate a book, entitled "A Proposition for his Majesty's Service, to bridle the Impertinence of Parliaments." This had been written by Sir Robert Dudley at Florence, and recommended the establishment in England of Louis XI.'s system of fortifications, garrisons, passports, and taxes, whereby he had completely put down the meetings of the States General in France, and had rendered himself absolute in that kingdom. St. John having procured a copy of it showed it to the Earl of Bedford, Selden, and other friends, and was preparing an answer to it denouncing the profligate design which it disclosed, when the King and his ministers, to ward off the disgrace that was about to be heaped upon them, pretended that they highly disapproved of the book, and actually preferred an information in the Star Chamber against the Earl of Bedford, Selden, and St. John for composing and publishing a seditious libel, entitled "A Proposition for his Majesty's Service, to bridle the Impertinence of Parliaments."

He is again prosecuted in the Star Chamber.

May 29. 1630.

This cause coming to a hearing, "a great presence of nobility being in court," * the Attorney General with gravity opened the charge, and explained how the defendants were

* 3 St. Tr. 397.

clearly guilty, because the book was libellous, and they had not only read it, but had shown it to each other, which, in point of law, amounted to a *publication;* whereas it was the duty of every one who met with a libel, without reading it through, immediately to lay it before the Secretary of State, or some other magistrate, so that its circulation might be stopped and the author brought to punishment. But, before Mr. Attorney had concluded his oration, the Lord Keeper Coventry, who was presiding, declared that the Queen was just brought to bed of a son (afterwards Charles II.); and that it having pleased the *Great Justice of Heaven* to bless his Majesty and his kingdom with a hopeful prince, the great joy and long expectation both of the King and kingdom, his most sacred Majesty directed the Court to proceed no further with this prosecution, but that the book should be burnt by the hands of the common hangman, as "seditious and scandalous both to his Majesty and the state." * Lord Clarendon says, "It being quickly evident that the prosecution would not be attended with success, they were all, shortly after, discharged." †

St. John felt no gratitude for being again released from impending peril, but vowed the destruction of a Government which could form such culpable plans, and resort to such unworthy artifices to conceal them. He was the confidential adviser of those who were prosecuted by the Government, but as yet he never appeared for any of them in court, and it was supposed that, although a very sensible man, he had no forensic talent.

At last, ship-money came up. He was counsel for Hampden, and he delivered the finest argument that had ever been heard in Westminster Hall. Having written a very learned opinion, in which he demonstrated the illegality of this imposition, and upon which payment of it had been refused,—having drawn the demurrer to the information filed in the Exchequer to recover the famous 20*s.*, — and evidently understanding the subject better than any man in England, Hampden placed entire confidence in his ability, notwith-

* Sic. 3 St. Tr. 397. † Rebellion, i. 287.

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standing his want of practice, and required him to plead as his leading counsel in the Court of Exchequer Chamber, where the case was to be heard before all the Judges.

A.D. 1637. He is counsel for Hampden in the case of Ship-money.

His argument, which lasted two whole days*, may now be perused with interest. We are chiefly struck with the calm, deliberate, business-like tone which pervades it. He always speaks respectfully of the just prerogatives of the Crown, and abstains from any triumph when he has exposed the fallacies of his antagonists; but, by a review of the principles of the English constitution, and of the statutes passed upon the subject from the Saxon times to the "Petition of Right," he demonstrates that, while an ordinary hereditary revenue belonged to the King, extraordinary supplies could only be obtained by a parliamentary grant; that if any power of taxing the subject had ever belonged to the King, it had been solemnly renounced and abrogated; that the demand upon the county of Buckingham to furnish the means for fitting out a ship of war was an entirely novel invention; and that if such a demand could be made as often as the King should say it was necessary, the property of all his subjects was held at his pleasure. Although newspaper reporting was still unknown, there was then a communication of intelligence by means of coffee-houses, clubs, and newsletters, more rapid and general than we should at present think possible without the instrumentality of the press; and in a few weeks the fame of this speech was spread all over the kingdom, producing a general resistance to the tax, which had hitherto been resisted by Hampden alone. St. John, who had been little known beyond a small circle of private friends and political associates, was now celebrated by all mouths, and was regarded as the great legal patron of the oppressed. Lord Clarendon, after observing that "he

* Although the length of speeches at the bar has certainly grown much of late years, it is some comfort to know that our ancestors sometimes suffered under greater tediousness than has ever been inflicted on the present generation. St. John, for the defendant, having taken two whole days of the time of the Court; Sir Edward Littleton, the Solicitor General, took for the Crown three; Mr. Holborne, for the defendant, took four; and Sir John Banks, the Attorney General, for the Crown, took three. We are not told how long the Judges spoke in giving their opinions; but, from their enormous lengthiness, they must have occupied many days.—3 St. Tr. 826—1315.

had not been taken notice of for practice in Westminster Hall till he argued the case of ship-money," is obliged to acknowledge, although with a sneer, that "this argument gave him much reputation, and called him into all courts and to all causes where the King's prerogative was most contested;" adding this very graphic little sketch of his appearance, manners, and habits: — "He was a man reserved and of a dark and clouded countenance, very proud, and conversing with very few, and those men of his own humour and inclinations."*

Of course, his practice was now chiefly in the Star Chamber, which was attended with more *éclat* than profit, and was by no means safe; for the advocate of a supposed libeller was regarded as "an accomplice after the fact." On the mere suspicion that he was concerned in drawing Burton's answer, St. John's chambers in Lincoln's Inn were searched, and all his papers were carried off.†

His revolutionary views.

Hyde, Hollis, Whitelock, Hampden, and the other friends with whom St. John was associated, while they strongly condemned the system of government which had been established, were all attached to the monarchy, and, as yet, only wished that parliaments should be restored, and that abuses should be corrected. But at this era, if not earlier, it is certain that St. John himself had become a determined republican, and that he thought there was no security for freedom but in a democratic revolution. To this he looked forward with eagerness; he regretted, or he joyfully hailed, events as they seemed to retard or favour it; and he exerted all his own energy and prudence to insure the ultimate success of what he denominated the "good cause." His own personal sufferings from a violation of the law, although they preyed much upon his mind, had been slight, and could afford little apology for schemes which might introduce public confusion; but, before we condemn him with very great severity, we must recollect that parliaments had now been suspended for nearly eleven years, contrary to a statute requiring the king to call a parliament at least once a year, — that there was a fixed determination against ever calling another parliament in England,

* Rebellion, i. 287. † 2 Strafford's Letters, 85.

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A.D. 1640.

— that other taxes as well as ship-money had been imposed and levied by the royal authority alone, — that a power was assumed of legislating on all subjects by royal proclamation, — that sentences of unprecedented cruelty had been inflicted upon those who stood up in defence of the constitution, — that this system of government had been established immediately upon the "Petition of Right" being added to the statute-book, — and, above all, that the following doctrine was openly avowed, and acted upon — "all statutes which encroach upon the essential prerogatives of the Crown are void." While monarchy existed, all remedy seemed hopeless.

For a long time, despotism (then called by the cant name of "Thurrough") was triumphant, and it would have been permanently established in England but for the indiscreet attempt to introduce episcopacy into Scotland. With rapture did St. John observe the insurrection in that country, — the march of a Scottish army to the south, — the flight of English troops before the invaders, and the necessity to which the King was reduced of again calling a parliament. He himself was returned for Totness.

His conduct in the "Short Parliament," and his joy at its abrupt dissolution.

He took little part in the debates of the "Short Parliament," which met on the 13th of April, 1640, and was dissolved on the 2d day of the following month. He was at first alarmed by observing the loyalty and moderate disposition of the members, but was much reassured by the rashness and violence of the King's advisers. He inflamed the dispute respecting the priority to be given to supply, or to grievances; and he was suspected of being in collusion with Sir Harry Vane the elder, who, being then in the King's service as Secretary of State, prevented an accommodation which had nearly been brought about, by declaring that "no supply would be accepted if it were not in the proportion and manner proposed in his Majesty's message." On the day of the fatal dissolution, as we are informed by the noble historian, "it was observed that, in the countenances of those who had most opposed all that was desired by his Majesty, there was a marvellous serenity: nor could they conceal the joy of their hearts; for they knew enough of what was to come, to conclude that the King would be shortly compelled to call another

parliament; and they were sure that so many unbiassed men would never be elected again." To show who the person was to whom he chiefly referred, he gives us this most interesting dialogue: —

"Within an hour after the dissolving, Mr. Hyde met Mr. St. John, who had naturally a great cloud in his face, and very seldom was known to smile, but then had a most cheerful aspect, and seeing the other melancholic, as in truth he was from his heart, asked 'what troubled him?' — who answered, 'that the same that troubled him, he believed troubled most good men; that in such a time of confusion, so wise a parliament, which alone could have found remedy for it, was so unseasonably dismissed:' the other answered with a little warmth, 'that all was well, and that IT MUST BE WORSE BEFORE IT COULD BE BETTER, and that this parliament never could have done, what was necessary to be done." *

Clarendon subsequently brings a charge of treachery against St. John, along with Pym and Hampden, for defeating the measures which ought to have been taken against the Scotch; but does not support it by any sufficient evidence.†

As St. John had foreseen, it soon became necessary to call another parliament; and the members returned to it were much more to his mind. He again represented the borough of Totness.

Nov. 1640. His conduct in the Long Parliament.

When the Long Parliament met, he still avoided oratorical display, but soon disclosed to the observing his "dark, ardent, and dangerous character." ‡ He drew the Resolutions against ship-money; and he was a member of the secret committee appointed to frame the articles of impeachment against the Earl of Strafford, along with Pym, Hampden, Hollis, Digby, Whitelock, Stroud, Earle, Selden, Maynard, Palmer, and Glyn. § Whitelock, distinguished for moderation, was put into the chair; but St. John was by far the most active of the whole in devising the charges, and in collecting evidence to support them.

Charles I., to save the life of his favourite, now contem-

* Rebellion, i. 218. † Ibid. 228.

‡ Hume. "Here was known the dark, ardent, and dangerous character of St. John."

§ Whitelock, 39.

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plated a change of his ministers; and an arrangement was actually made for the introduction of the most influential of the popular leaders into office. The Earl of Bedford was to be Lord Treasurer; Pym, Chancellor of the Exchequer; Hollis, Secretary of State; Lord Say, Master of the Wards; Hampden, tutor to the Prince of Wales; and Oliver St. John, Solicitor General. Lord Clarendon says, that this last appointment was recommended by the Earl of Bedford, "which his Majesty readily consented to; hoping that, being a gentleman of honourable extraction (if he had been legitimate), he would have been very useful in the present exigence to support his service in the House of Commons, where his authority was then great; at least, that he would be ashamed ever to appear in any thing that might prove prejudicial to the Crown." *

St. John Solicitor General.

At this time there was a move in the law by the flight of Lord Keeper Finch, — when the great seal was delivered to Sir Edward Littleton; Bankes was made Chief Justice of the Common Pleas; and Herbert was promoted to be Attorney General. On the 29th day of January 1641, a patent actually passed, constituting Oliver St. John Solicitor General; and he took the oath of allegiance, and the oath of office, by which he swore to give faithful advice to the King, to plead for him in all causes, and to suffer nothing to be done to his detriment. The Earl of Bedford, who had conducted the negotiation, dying soon after, it went off, and none of the other appointments took place. St. John, however, remained Solicitor General, "and he became immediately possessed of that office of great trust; and was so well qualified for it, at that time, by his fast and rooted malignity against the Government, that he lost no credit with his party, out of any apprehension or jealousy that he would change his side, — and he made good their confidence; not in the least degree abating his malignant spirit, or dissembling it; but with the same obstinacy opposed every thing which might advance the King's service when he was Solicitor, as ever he had done before." †

* Rebellion, i. 326.

† Ibid. 327. He was immediately elected a Bencher of Lincoln's Inn: —

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How such an office should be held by one in active and open hostility to the Government, it puzzles us, who live in quiet and regular times, to understand. The King remained at Whitehall for more than a twelvemonth after; — and during all this time there must have been business for a law officer to transact with the ministers of the Crown and with his colleague. Herbert, the Attorney General, was in the King's entire confidence, and was even made the instrument of his fatal folly in impeaching the five members of the House of Commons of high treason. St. John, their bosom friend and confederate, meanwhile was called "MR. SOLICITOR," was hurrying the King's minister to the scaffold, was plotting the measures which he thought best calculated to produce civil war, and looked forward to an Anglican republic as the consummation of his wishes.

His atrocious proceedings in the prosecution of Lord Strafford.

He actually thirsted for the blood of Strafford; and he was resolved to gratify his appetite, in violation of all law, human and divine. Probably he had worked himself up into a delusive belief that he was actuated by a regard to the public good; but he seems to have been impelled by personal spite, arising from some unrevealed affront. The great delinquent who had deliberately planned the subversion of public liberty deserved to be severely punished, and some virtuous men were even of opinion that he ought to expiate his offence with his life; but all except St. John were for allowing him a fair trial. Had it not been for St. John he would have been acquitted, and an entirely different turn would have been given to the history of England.

While the prosecution was carried on according to the forms of an impeachment, he who was guiding it in all its details, and making the ostensible actors move as he directed them, found it more convenient to remain himself in the background; and Pym, Glyn, and Whitelock, were much more conspicuous, both in addressing the Lords and in examining

"At a Councell held the 29th Jany 1640[1]. Att this Councell Oliver St Johns Esqr. his Ma^{ts} Sollicitor genrall is called to the Bench and is to be Published at the Moote this night."

The following year he was Treasurer. It appears from the books of the Society that he attended the Councils regularly from this time till he was made Chief Justice in 1648.

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the witnesses; but when, after the defendant's masterly appeal to his judges against the attempt to take away his life by new and unknown laws, and the admirable argument of Lane, his counsel, showing that none of the facts proved, or even alleged against him, amounted, in point of law, to high treason, he was on the point of being acquitted, — St. John thought it necessary to take the matter entirely into his own hands. He therefore required that the impeachment should be dropped, and that a bill of attainder should be substituted for it, whereby the forms of law and the principles of justice might more easily be violated. Selden, who had supported the impeachment,—Holborne, who had so zealously assisted in arguing the question of ship-money,—and several other enlightened lawyers of his party, strongly opposed this course; but, by sophistical speeches which St. John himself delivered, and by procuring others to excite the passions of the mob, he succeeded, with little difficulty, in carrying the bill through the House of Commons. How was he to obtain for it the consent of the Lords, who were ready to acquit on the articles of impeachment? He resorted to the ingenious expedient of making himself counsel for the bill at the bar of the Upper House,—without having any opponent. For this purpose he proposed a conference between the two Houses, which was agreed to,—and he acted as the sole manager for the Commons. In this capacity he delivered a speech the most disgraceful ever heard before any tribunal professing to administer criminal justice. Knowing that there was to be no reply, he grossly misrepresented former precedents, and misconstrued the famous statute of Edward III. respecting treason, which, he said, was only binding on the inferior courts, but allowed parliament still to punish as treasonable any acts which they might think deserved the punishment of treason. But he felt that his reasoning on this point was weak, and that his only chance of success was by taking advantage of the odium under which his destined victim then laboured. He thus alludes to the objection that he proposed to take away the life of the Earl of Strafford by an *ex post facto* law:—

"But, my Lords, it hath often been inculcated, that 'law-makers should imitate the Supreme Lawgiver, who commonly warns before he strikes: The law was promulged before the judgment of death for gathering the sticks: *no law, no transgression:*'"

He gives this answer of unparalleled atrocity, — which, if Milton had put it into the mouth of one of his fallen angels, would have been thought too diabolical: —

"My Lords, the rule of law is, *Frustra legis auxilium invocet, qui in legem committit.* The proper law for such a case is the *lex talionis:* he that would not have had others have a law, why should he have any himself? Why should not that be done to him that himself would have done to others? It is true we give law to hares and deers, because they be beasts of chase; it was never accounted either cruelty or foul play to knock foxes and wolves on the head as they can be found, because these be beasts of prey. The warrener sets traps for polecats and other vermin for preservation of the warren. Proceeding by bill, every man is guided by his conscience, and, without any evidence at all being given, may award the deserved punishment."

"Upon the close of Master St. John's speech," says the old report, "the House adjourned, nor was there one word spoken but by Master St. John — only the Lord Lieutenant, by a dumb eloquence, *manibus ad sidera tensis,* held up his hands towards heaven and made his reply with a deep silence."

The following day Strafford petitioned to be heard by his counsel, but on the suggestion of St. John he was told that the House of Commons must have the last word. Upon a division the bill was carried by a majority of twenty-six to ten; and Charles being induced, against his conscience and his vow, to give it the royal assent, the vengeance of St. John was satiated.* May 12.

His bill against the Church.

He is said to have "contracted an implacable displeasure against the Church party, from the company he kept."† To gratify this he now drew, with his own hand, a bill "for the utter eradication of bishops, deans, and chapters; with all chancellors, officials, and all officers and other persons belong-

* 3 St. Tr. 1382—1536; Rebellion, i. 360.

† Ib. 288.

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ing to either of them." He would not, however, move it himself, but, *more suo*, prevailed on a foolish baronet called Sir Edward Deering, a man of levity and vanity, easily led by a little flattery, to present it to the House, — supplying him with an apt quotation: —

> "Cuncta prius tentanda, sed immedicabile vulnus
> Ense recidendum est, ne pars sincera trahatur."

The mover spoke from the gallery, and, as he thought, with great effect; but a strong objection was made to the first reading of the bill, and the real author of it was obliged to start up in its defence. He disingenuously argued, "that the title of the bill, although disapproved of, was no argument against reading it a first time; that the title might be false, and that this bill, for aught any one knew to the contrary, or at least for aught he and many others knew, might contain enactments for establishing bishops, and granting other immunities to the Church." The bill was read a first time, — and, being afterwards altered into a bill to prevent bishops from sitting in the House of Lords, or holding any secular office, it passed both Houses, and received the royal assent.*

His bill for transferring military power to the Parliament.

Open hostilities being at last contemplated, Mr. Solicitor drew another bill "for the settling the militia of the kingdom, both by sea and land, in such persons as Parliament should nominate," and got it brought forward by Sir Arthur Haslerig, whom he was said "to use as Noah did the dove out of the ark, to try what footing there was." The House seemed inclined to throw it out, as "a matter of sedition," without suffering it to be read, not without some reproach to the person who moved it, till the King's Solicitor declared that "he thought that passion and dislike very unseasonable before the bill was read,— that it was the highest privilege of every member to make any motion which in his conscience he thought advantageous for the kingdom, — that something was necessary to be done for regulating the command of the militia, which as yet was left undetermined by the law, and, if the power were too great for any subject, in a subsequent stage of the bill it might be devolved upon the Crown."

* Rebellion, i. 368.

The bill was therefore read a first time. On a subsequent occasion the measure was strongly opposed by Mr. Hyde, who contended "that the power of the militia unquestionably resided in the King, along with the right of making war and peace; and that, as no defect of power had ever appeared under the old law, we might reasonably expect the same security for the future:" with which, he says, "the House seemed well pleased, till the King's Solicitor, and the only man in the House of his learned counsel, stood up and said — 'I should be right glad if there were such power in the King (whose rights as his sworn servant I am bound to defend). The gentleman who spoke last seems to imagine so; but, for my part, I know there is not: the question is not about taking away power from the King which is vested in him (which it would be my duty to oppose): we have to inquire whether there be such a power in him, or anywhere else, as is necessary for the preservation of the King and the people. I take upon me with confidence to affirm that there is a defect of such power, which Parliament ought to supply.'" But he failed for once; his artifice was too transparent, and he so far shocked the remaining loyalty of the House that the Bill was allowed to drop, although it was afterwards renewed in the shape of an ordinance when the King's assent was not required for the making of laws.*

The Solicitor General quiets all scruples respecting the oath of allegiance.

In the beginning of the following year, Charles leaving Whitehall and going to the north of England to prepare for war, the parliamentary leaders took measures for having the train-bands called out in the City of London, and for securing some garrisons in the provinces. Notwithstanding an ordinance of the two Houses for these purposes, several of the party had qualms about the oath of allegiance which they had taken, but Mr. Solicitor showed them that these proceedings were perfectly legal and constitutional: —

"He argued, that the Lords and Commons, in case of the King's minority, sickness, or absence, had done the same in other times:

* Rebellion, i. 430. 514. 516. 604. Clarendon adds, "The Solicitor General, who had obliged himself by a particular oath to defend his Majesty's rights, and in no case to be of counsel or give advice to the prejudice of the Crown, was the chief instrument to devise and contrive all the propositions and acts of undutifulness towards him." — (Pp. 499, 500.)

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as when Henry III. died, and his son Edward I. was in the Holy Land, and came not home in almost two years after his father's death, yet, in the meantime, the Lords and Commons appointed lieutenants of the several counties, and made several ordinances which are in force at this day. So are the ordinances made by them in the minority of Henry VI., and the ordinances in the minority of Edward VI., and in other times. That the King was now absent, and having called his parliament at Westminster, was himself gone as far from them as York, and had, before he came thither and since, appeared with warlike forces about him to the terror of the parliament; and that they had not the least purpose or intention of any war with the King, but to arm themselves for their necessary defence."

On these grounds the Parliament passed a vote that "the ordinance for the safeguard of the kingdom is no whit prejudicial to the oath of allegiance, but is to be obeyed as other fundamental laws, and that the King's commands for lieutenancy over the respective counties, issued without the concurrence of the two Houses, are illegal and void."

His short taste of military life.

St. John, to set a good example, himself accepted a commission as deputy lieutenant from the Parliament, and began to assist in raising and drilling men; but he soon found that he had not much military genius, and that he could better serve the "good cause" by continuing to wear the gown.*

He was placed upon the Committee of the House of Commons which, during the adjournment of the House, had all power committed to it, and which, in truth, constituted the executive government. After the death of Pym, who was the first chairman, St. John had the greatest influence, and was most looked up to by the public, till the *prestige* of military glory gave the ascendency to Cromwell.

May, 1642. St. John's proposal for supplying the Parliament with a great seal.

The parliamentary party had been thrown into a state of consternation by the flight of Lord Keeper Littleton to York with the great seal. The most superstitious veneration was felt by all lawyers except St. John for this bauble, and, for want of it, the administration of justice had been suspended during a twelvemonth without any expedient having been proposed to supply its place. In the following Hilary term came out a satirical pamphlet, entitled "St. Hilary's

* Whitelock, 57. 59.

Tears, shed upon all Professors of the Law, from the Judge to the Pettifogger." At last Mr. Solicitor proposed an ordinance for making a new great seal in exact imitation of the one in possession of his Majesty, so that by affixing it to their acts they might continue to carry on the government in the King's name. This was violently opposed upon the clause in the statute 25 Edward III. which enacts that "to counterfeit the King's great seal shall be high treason;" and, although it was carried through the House of Commons, the ordinance was rejected by the Lords, who thought that such a step would be an entire renunciation of their allegiance.

He is superseded as Solicitor General by the King, but retains the title. Oct. 30.

The King, judging it full time to prevent the person who now openly attempted the subversion of the monarchy from appearing to be clothed with any authority by the Crown, caused a patent to pass, under the great seal, at Oxford, superseding Oliver St. John as Solicitor General, and appointing Sir Thomas Gardiner, the ejected Recorder of London, in his stead.* This was met by an ordinance which made void all patents that had passed or should pass the great seal in the King's possession "since the time it ceased to attend the parliament;" and St. John continued to style himself "Mr. Solicitor" till he was raised to be Attorney General. Meanwhile he carried a resolution of the House of Commons, independently of the Lords, that a new great seal should be made; and, by throwing out hints that their Lordships might be voted useless, he prevailed upon them to agree to an ordinance for using this new great seal, and for delivering it to six commissioners — two peers and four commoners — who were to exercise all the powers of Lord Chancellor. He himself, with his designation of "Solicitor General to the King's Majesty," was nominated the first of the commissioners who represented the Commons. Accordingly, he was sworn in with much solemnity, taking the oath of office in the ancient form, and again swearing "to be faithful, and bear true allegiance, to his majesty King Charles I., and him to defend from all treasons and traitorous conspiracies whatsoever."

November. He becomes a Lord Commissioner of the Great Seal.

In Hilary Term, 1644, he took his seat in the Court of

* Dugd. Chron. Ser.

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Chancery as a Lord Commissioner, and continued to hold this employment for nearly three years, till he was obliged to resign it in consequence of Cromwell's "Self-denying Ordinance," by which all members of parliament except himself were disqualified for offices, civil or military. St. John received 1000*l.* for his trouble, together with the privilege of ever after sitting within the bar in all courts of justice.*

Jan. 1645. He is a commissioner for the Parliament at the treaty of Uxbridge.

When the conferences were to be held at Uxbridge, St. John was named one of the parliamentary commissioners; but a great difficulty arose about his designation in the commission, and safe conduct. He had been at first styled "Solicitor General to the King." Charles acquiesced, but in his own commission he named Sir Thomas Gardiner, and described him as "our Solicitor General." To this and similar designations of royal commissioners the Parliament strongly objected, as giving effect to patents under the great seal since it had been carried off by Lord Keeper Littleton. At last it was agreed that the commissioners on both sides should be enumerated simply by their christian and surnames. "Plain Oliver St. John" (as he was now called) took an active part in the conferences which followed, and the command of the militia still being the great bone of contention, he strenuously denied that it belonged constitutionally to the King. While some of his colleagues sincerely tried to bring about an accommodation, he inflamed the animosity between the contending parties, and caused a rupture which proved the prelude to the King's imprisonment and death.†

To reward him for his zeal, the office of Attorney General was conferred upon him by the Parliament, although it was still legally held by Sir Edward Herbert, who had been appointed to it before the troubles began, and had always followed the King's head-quarters.‡

The decline of his influence.

After the royalists had been completely worsted, the politi-

* Whitelock, 71. 77.; Rebellion, ii. 610, 611.; Lives of Chancellors, vol. iii. ch. lxviii.

† Rebellion, ii. 890. Lord Clarendon represents St. John as a spy upon the rightly disposed commissioners, and says, "though most of the rest did heartily desire a peace, even upon any terms, yet none of them had the courage to avow the receding from the most extravagant demands."

‡ Whitelock, 88.

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cal consequence of St. John lamentably declined, and he felt his position very uncomfortable. He had professed himself a Presbyterian, he had sat as a member in the famous Assembly of Divines at Westminster, and he had subscribed the Solemn League and Covenant. But the Presbyterians showing a strong hankering after monarchy if they could have a "Covenanted King," he was now more inclined to join the Independents. Unfortunately, however, the leaders of this sect were the Lord General Cromwell and his brother officers, who slighted all *pequins*, and were determined to rule by the sword.

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For two or three years St. John acted irresolutely,—waiting for events, and hoping that Cromwell might fall in the field, or might lose his ascendancy, — when he expected to be himself acknowledged the head of a republic. Such ambitious projects melted away as the power of the great military chief was consolidated; and the aspiring democrat, who had hoped to make himself greater than any King of England, saw that he must either retire from public life altogether, or consent to act a very subordinate part under a military dictator. The latter course he preferred: *first*, because, with all his high qualities, he laboured under a sordid passion for money; and *secondly*, because he wished still to keep up a connection with political partisans who might one day rally round him. Not being able successfully to oppose Cromwell, he deemed it more prudent to appear to yield to him submissively, and entirely to disarm his jealousy. He therefore henceforth contented himself with assiduously performing the functions of a law officer of the Crown, prosecuting, in the King's name, those who too indiscreetly testified their zeal for the King's authority. The most difficult task imposed upon him was to punish Judge Jenkins, the honest Welshman who resolutely set at defiance the parliamentary Commissioners of the Great Seal, and would acknowledge no authority which did not emanate from the King.*

He wishes to become a Judge.

At last Mr. Attorney St. John became very tired of such work, which he thought sadly unsuitable for one fit to govern an empire. His only resource was to go upon the bench,

* Whitelock, 255.; 4 St. Tr. 942.

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where he would be free from any present annoyance, and might quietly watch the political horizon. The administration of justice had gone on regularly in the King's name, two puisne judges sitting in each of the superior common law courts, but the chiefships had been several years vacant. Heath, Chief Justice of the King's Bench, had been removed by an ordinance; Banks, the Chief Justice of the Common Pleas, died in 1644; and Lane, whom Charles had made Chief Baron at Oxford, had accepted the titular office of his

October.

Lord Keeper. St. John represented to Cromwell that, as the negotiations with the King, who was a prisoner in the Isle of Wight, might now be considered for ever closed, and a vote against addressing him or further recognising his authority was in contemplation, it would be fit, with a view to the measures which might be necessary to extinguish the monarchy in form as well as substance, that the high magistracies, which the people had been in the habit of regarding with reverence, should be occupied by men entirely to be confided in. At the same time he hinted that, although he was known to prefer politics to law, he might be prevailed upon, for the public good, to submit for a time to the dull and irksome business of Westminster Hall. Cromwell, well pleased with the prospect of finding harmless employment for such a restless spirit, entirely acquiesced in the proposal, and offered that he should be made Chief Justice of the King's Bench. This dignity he declined under the pretext of humility, but probably from the apprehension that it was very likely, from engaging him in all state trials, to bring him into frequent collision with the ruling powers. With his concurrence, it was arranged that Rolle, who was a profound lawyer and nothing else, should hold the highest office; that Serjeant Wilde, who had been an active member of the Long Parliament, should be appointed Chief Baron of the Exchequer; and that he himself should have the "cushion of the Common Pleas," which, both for ease and profit, still had great charms in the eyes of calculating lawyers.

Nov. 15.

An ordinance for this purpose having passed, the new Chief Baron was first sworn in, as he was already a Serjeant;

and thus Lord Commissioner Whitelock began a long address to him: —

A. D. 1648. Address to Serjeant Wilde.

"Mr. Serjeant Wilde, —The Lords and Commons in parliament taking notice of the great inconvenience in the course of justice for want of the proper and usual number of Judges in the High Courts at Westminster, whereby is occasioned delay, and both suitors and others are the less satisfied, and being desirous and careful that justice may be administered *more Majorum*, and equal right done to all men according to the custom of England, they have resolved to fill up the benches with persons of approved fidelity and affection to the public; and of piety, learning, and integrity; and having found, by long experience among themselves, that you, Mr. Serjeant Wilde, are a person thus qualified, and very well deserving from the Commonwealth, they have thought fit to place you in one of the highest seats of justice, and have ordained you to be Lord Chief Baron of this Court."

Nov. 18.

A call of Serjeants immediately followed, St. John being at the top of the list; and thus the Lord Keeper began his address to them: —

St. John made a Serjeant.

"Mr. Serjeant St. John, and the rest of you gentlemen who have received writs to be Serjeants-at-law, — It hath pleased the Parliament, in commanding these writs to issue forth, to manifest their constant resolution to continue and maintain the old settled form of government and laws of the kingdom, and to provide for the supply of the High Courts of Justice with the usual number of Judges, and likewise to bestow a particular mark of favour upon you as eminent members of our profession."

Chief Justice of the Common Pleas.

Three days afterwards, Mr. Serjeant St. John was sworn in, and took his seat as Chief Justice of the Common Pleas; but there was no speechifying on this occasion.* It would have been very curious to have had an authentic exposition of his sentiments when such a great crisis was impending.

He was scarcely warm in his seat, which he expected to yield him entire repose, when the resolution was taken to exhibit the Sovereign holding up his hand as a culprit at the bar of a criminal court. It has generally been said that St. John disapproved of this proceeding — which is probable enough — from his conviction that it must lead to the permanent supremacy of Cromwell — although not from any scruples about royal irresponsibility, or the sacredness of

* Whitelock, 348—356.

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an anointed head. But I find no contemporary statement of anything that passed between him and those who had vowed Charles's death, till the bloody deed was done. I believe that he, and all the other common law judges, refused to allow their names to be introduced among those who were to constitute the "High Court of Justice," and, if they were asked to attend as *assessors*, they had refused, for none of them were present at the trial in any capacity.

His conduct on the execution of Charles I.

On the 31st of January, 1649, Westminster Hall was in a state of dreadful perplexity. Lawyers are so much under the dominion of form, that all writs and commissions having hitherto issued in the name of "CHARLES I. by the grace of God of Great Britain, France, and Ireland, King, Defender of the Faith," &c., to whom the oath of allegiance continued to be taken, the Judges — who believed themselves to be loyal men — had continued to hold their offices, and, receiving their fees and salary, to decide without much scruple all civil and criminal cases which came before them. But when Charles I. had actually been beheaded, an ordinance had passed to make the proclamation of Charles II. high treason, and the House of Lords had been abolished as useless, the delusion could be fostered no longer. Six of them — Bacon, Browne, Bedingfield, Creswell, Trevor, and Atkins — refused to sit again; but the other six — Rolle, St. John, Wilde, Jermyn, Pheasant, and Yates — sent in their adhesion, "provided that by act of the Commons the fundamental laws be not abolished." Accordingly new commissions were made out to them under the great seal of the Commonwealth, and there was an "order for altering the Judges' oaths — formerly in *the name of the King*, now to be *in the people*."* The others confined themselves to their judicial duties, but St. John became a member of the executive council, and was deeply absorbed in politics. He actually continued Chief Justice of the Common Pleas till the Restoration, a period of twelve years; but I do not discover the report of any case decided by him during this long interval, and I suspect that, leaving the business of the court to be done by his juniors, his thoughts were chiefly occupied with considering how the overwhelming

* Whitelock, 378.

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power of Cromwell might be curtailed, and how his own might be advanced.

June 1650. His conference with Fairfax respecting the command of the army.

When an army was sent to invade Scotland, where the authority of Charles II. as a "Covenanted King" was recognised, and Fairfax, who was himself a sincere Presbyterian, refused to command it, St. John was one of the committee deputed to remove his scruples, and seems earnestly to have tried to succeed; — while others played the game of Cromwell, who was now intriguing to be appointed generalissimo of all the parliamentary forces. Whitelock has left a very ample report of the conference on this occasion: —

Lord General Fairfax: "I need not make to you, or to any that know me, any protestation of the continuance of my duty and affection to the Parliament, and my readiness to serve them in anything wherein my conscience will give me leave." *St. John:* "I pray, my Lord, be pleased to acquaint us with your particular objections against this journey." *Lord General:* "You will give me leave, then, with all freeness to say to you, that I think it doubtful whether we have a just cause to make an invasion upon Scotland. With them we are joined in the national league and covenant." *St. John:* "But, my Lord, that league and covenant was first broken by themselves, and so dissolved as to us."

All this reasoning was vain; and Cromwell, gaining his object, fought the battles of Dunbar and of Worcester, and made himself Lord Protector.

He is appointed ambassador to Holland.

Meanwhile he wished to get St. John out of the way, and an ordinance passed the House of Commons appointing him ambassador to Holland. This mission was exceedingly distasteful to the Lord Chief Justice; for it was not only to remove him from the scene where, on any unlucky chance happening to Cromwell, he hoped to act the first part, but he was to be exposed to great personal danger. In Holland, although a republican form of government existed there, the cause of the English Commonwealth was very unpopular; and Dorislaus, their first ambassador, had been assassinated at the Hague without any sincere effort being made to bring his murderers to justice. A hope was entertained that on the death of William, the second Prince of Orange, who had married a daughter of Charles I., there might be a more friendly feeling towards English repub-

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A.D. 1651.

licans. But Ascham, another parliamentary ambassador, had lately been assassinated by the royalists at Madrid; and St. John, dreading a similar fate, presented a petition that he might be excused, alleging his important judicial duties at home, his infirm health, and the insalubrity of the climate. But his timidity was derided, and upon a division his petition was dismissed by a large majority.* He was allowed 10,000*l.* to pay his expenses, and forty attendants to protect him.

April. Insult to Chief Justice St. John in Holland.

Accordingly he made his public entry into the Hague, with a retinue and parade becoming the representative of a powerful nation; but the populace saluted him with groans and hisses; and the royalists were not only resolved to insult him on every occasion, but to offer violence to his person. Edward, a son of the Queen of Bohemia, publicly called him *a rogue* and *a dog;* and the Duke of York, with the Princess Henrietta on his arm, meeting him by accident near a turn-stile at Verhout, there was a struggle which should pass first,—upon which the Prince snatched the ambassador's hat off his head, and threw it in his face, saying "Learn, parricide! to respect the brother of your King." The ambassador replied,—"I regard neither you nor the person of whom you speak but as a race of fugitives." Swords were then drawn, and it was only by the interference of the spectators that fighting was prevented. Afterwards there was an attempt made to break into St. John's house, by ruffians who had a rope with them, with which they meant to strangle him. On various pretences the States General refused to grant any redress, and put off from time to time the matters that were to be negotiated.

St. John returned home abruptly, vowing revenge,—and he was not a man to let his resentment pass off in empty words. He delivered to the Parliament an inflamed account of the manner in which the English nation had been wronged in his person. Next he pointed out a plan by which ample punishment might be inflicted on the offending parties. Hitherto the Dutch had been the great carriers for the

* Journals, 1651, Jan. 21. 23. 28. Here the Parliament closely imitated the tyranny of the Stuarts, who were in the habit of punishing obnoxious individuals by a foreign mission.

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English as well as other European nations;—and he proposed an ordinance to enact "that no goods, the produce of Asia, Africa, or America, should be imported into this country in ships which were not the property of English subjects; and that no goods, the produce or manufacture of any part of Europe, should be imported unless in English ships, or ships of the country where such goods were produced or manufactured." The ordinance was quickly passed, and being confirmed by an act of parliament on the Restoration, the famous Navigation Laws, supposed to be the result of the calm deliberations of our ancestors, arose from a personal affront offered to one of our republican ambassadors.*

Origin of the Navigation Laws.

May. St. John a commissioner to negotiate a union with Scotland.

St. John was next employed as a commissioner to induce the Scotch to agree to a legislative union with England. He had to encounter not only the pride of national independence, but a deep distrust of those who had thrown off the solemn league and covenant, and the dread of a measure which "tended to draw with it a subordination of the Kirk to the State in the things of Christ." However, he convened at Dalkeith the representatives of the counties and boroughs, with full powers to treat for the entire incorporation of the two countries. A great majority were induced by him to give their consent; and afterwards there were chosen, at Edinburgh, twenty-one deputies to arrange the conditions with English commissioners at Westminster. Under his auspices conferences were afterwards held there, and this proceeding laid the foundation of the Parliament, for the whole island, which Cromwell afterwards summoned.

While in Scotland, St. John was likewise of great service in assisting the introduction into that country of English Judges, who, although jeered at as "kithless loons," administered justice so satisfactorily as almost to reconcile the natives to a foreign yoke.†

Qu. whether he favoured the measure of making Cromwell King?

After the battle of Worcester, when Cromwell, secretly wishing to be proclaimed Oliver I., said to a meeting of members of parliament and officers whom he had assembled,

* Whitelock, 487. 491, 492.; New Parl. Hist. iii. 364.; Ludlow's Mem. 133. 250.; Memoirs of the Cromwell Family, ii. 19.

† Whitelock, 517. 532.

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that "now the old King being dead, and the son being defeated, he held it necessary to come to a settlement of the nation;" and Desborough having declared for a republic; St. John is supposed to have said, "It will be found that the government of this nation, without something of monarchical power, will be very difficult to be settled so as not to shake the foundation of our laws, and the liberties of the people." Whitelock represents St. John, whom he hated, as having been a tool of Cromwell; but if St. John actually took this side, I suspect that it was to lure Cromwell on to his ruin. Most of the lawyers were sincerely for a mixed monarchical government — but St. John remained a stern democrat; and although, to keep his places, he was ready to conform to what he disliked, he would never have actively assisted in restoring the government of ONE even with a change of dynasty.*

About this time he was elected Chancellor of the University of Cambridge, having shown a disposition to protect human learning against the attacks of the fanatics, who declared that no books were worthy of being read except the books of the Old and New Testament, excluding the Apocrypha. He was likewise instrumental in preserving some of our venerable ecclesiastical structures from the ruin which then threatened them. "The Cathedral at Peterborough was left in a state of desolation by a party of the parliamentary troops under Cromwell, and so it continued until Oliver St. John, Ch. J. of C. P., on his return from Holland, obtained it of the Parliament, and gave it as a parochial church for the use of the townsmen, their proper parish church being gone much to decay."†

Charges against him of corruption.

The Lord Chief Justice St. John continued to represent Totness in the House of Commons, the republicans of the 17th century having no objection to the union of judicial and political functions in the same individual. But, after the dissolution of the Long Parliament, and the establishment of the Protectorate, seeing no chance for democracy, he appears to have taken very little part in public affairs. His

* Whitelock, 516. 487. † Bridges' Northamptonshire, 548.

enemies say that "though so greatly attached to his darling commonwealth, yet he chose to retain his places under every form of government. The reason of this was his avarice, which got the better of his political sentiments. They in power knew his love for wealth, and gratified him accordingly; he had the granting of all pardons to the delinquent loyalists, which amounted to the enormous sum of 40,000*l.*, nor did he scruple accepting bribes for places under Oliver."*

I am unable to corroborate or to contradict these grave charges against him. He certainly was not a member of Barebone's parliament, which met in 1653; nor does his name appear in the list of the House of Commons on the reformed model which met in 1654, nor in that which Cromwell called in 1656. We, therefore, do not know what part he took when the crown was formally tendered to the Protector, but he seems at last to have relented in favour of hereditary power and honours, for in the year 1657 he accepted a peerage, and actually took his seat in Oliver's House of Lords as Lord St. John.† However, he was still silent and sulky, looking forward to better times.

A.D. 1658. His conduct on the accession of Richard.

He thought that these had arrived when, on the death of Oliver, the sceptre was transferred to the feeble hand of Richard. His patent was renewed as Chief Justice‡, he procured himself to be elected a member of the Council of State, and he was in hopes to rule either as minister of the new Protector, or as the president of a pure republic, which had been so long looked for in vain. But he was again disappointed, for Richard instantly fell into universal contempt, and, military violence alarming all parties, the restoration of the exiled royal family was evidently at hand. St. John saw that this event would not only for ever dissipate his republican dreams, but would be very dangerous to him individually; and he made a resolute struggle against it. When the Rump was restored, he again took his seat as member for Totness, by virtue of his election nearly twenty years before; but his reception now was very different from what it had been in the same assembly when he was urging

* See Noble's Memoirs of the Cromwell Family, ii. 22.

† Whitelock, 666.; 3 Parl. Hist. 1518.

‡ Ibid. 678. 688.

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A.D. 1660.

on the impeachment of Strafford, the overthrow of the Church, and the usurpation of military power. The vote having passed for the dissolution of the Long Parliament and the calling of a Convention, he retired to his country-house, Long-Thorpe, in Northamptonshire; and, the Cavaliers beginning to vow instant vengeance against the most obnoxious of the Roundheads, he shut himself up in a place of concealment. Although he had not actually sat as one of the late King's judges, it was truly said that no one had more effectually promoted the catastrophe of the King's death.

His danger on the restoration of Charles II.

He owed his safety to Thurloe, who had been his clerk, whom he recommended to Cromwell, and who, having enjoyed great power under the Protectorate as Secretary of State, was now in favour from having materially promoted the Restoration. It was said that a large bribe contributed to his deliverance; but this is a mere surmise without any authority.* From the proposed indemnity twenty were to be excepted, whom it was determined to bring to the scaffold. General Ludlow, in his Memoirs, says, "The news of this resolution being carried to Charles II. by the Duke of York, the Duke of Buckingham, and Monk, he openly expressed his joy; and when they told him that the Chief Justice St. Johns† had narrowly escaped, he wished he had been added also: of which particulars I received information by a person of honour, then present, immediately after they parted."‡

But his life was spared only on condition that he was never to accept any civil, ecclesiastical, or military office, on pain of being liable to the penalties of treason. A free pardon was offered to him if he would assist in bringing the regicides to justice, but he spurned such baseness. He went abroad under pretence of travelling for his health; and, still afraid of the Cavaliers, who repeatedly attempted to assassinate Ludlow and other exiled republicans, he took the name of Montague, and lived several years in great seclusion, first at

* Noble's Family of Cromwell, ii. 23.

† It is curious to observe that in the seventeenth century there were many proper names which were promiscuously spelt, and must have been pronounced, without, and with, a final *s*; — as *St. John, St. Johns; Rolle, Rolles; Hale, Hales*, &c. &c.

‡ Mem. 356.

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Utrecht and then at Augsburg. In 1669 he ventured to return to his native country, and he lived quietly at Long-Thorpe till the 31st day of December, 1673, when he expired. He was supposed to have reached the 75th year of his age.

His death.

His real character may best be known by the designation generally applied to him in his own time, — "THE DARK-LANTHORN MAN." From his proud, reserved, and morose disposition, he made himself so unpopular that there was a general disposition to aggravate his misconduct, and we must receive the stories circulated against him with considerable suspicion.

He did very little for the improvement of jurisprudence; for although he effectually resisted the absurd schemes at once to abolish the Court of Chancery, and to substitute the law of Moses for the common law of England, — absorbed in his ambitious schemes he took no interest in the wise legal reforms which were carried on by Hale, Whitelock, and other enlightened Commonwealth lawyers. Beginning the world without a shilling, he died disgracefully rich, so as to countenance the charges brought against him of cupidity and corruption.

His relationship to Cromwell.

He is often mentioned as a cousin of Oliver Cromwell — but this relationship was only by marriage. His first wife was a daughter of Sir James Altham, maternally descended from the Cromwells. By her he had several sons, and a daughter, Joanna, who was married to Sir Walter St. John, of Tregoze in Wiltshire, and was the grandmother of the celebrated Henry St. John, Viscount Bolingbroke.*

His children.

He had another daughter, Elizabeth, who being about to be united to a Huntingdonshire squire, the Chief Justice, according to the then existing law, not only gave her away, but himself performed the nuptial ceremony which made them man and wife.†

* Mallet, in his Life of Bolingbroke, says, "His grandfather, Sir Walter St. John, marrying one of the daughters of L. C. J. St. John, who, as all know, was strongly attached to the republican party, Henry was brought up in his family, and consequently imbibed the first principles of his education amongst the Dissenters." He afterwards goes on to trace his contempt for all religions to the fanaticism and hypocrisy which he witnessed among the Presbyterian clergy under his great grandfather's roof at Long-Thorpe.

† Extract from the Parish Register of Enfield: — "The truelie worthy John Bernard of Huntingden, within the County of Huntingdon Esqre single

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Parallel between St. John and Cromwell.

When Oliver St. John and Oliver Cromwell had respectively reached their fortieth year, the former was by far the more eminent person. He had not only distinguished himself at the bar, but he was the chief adviser of the great political party opposed to arbitrary government, who, although depressed for eleven years, were ere long to gain the ascendancy; while the future PROTECTOR, after a licentious youth, was obscurely spending his middle age in the country, occupied with feeding cattle and draining marshes. When the troubles began, St. John preserved his superiority, and swayed the deliberations of the Long Parliament, — Cromwell, from his uncouth appearance and embarrassed oratory, being to all, except to a descerning few, a man of no mark or likelihood. Even after the praying colonel of horse had led on his psalm-singing troopers to victory at Edgehill and Marston Moor, the dark, designing lawyer, holding the great seal and presiding in the committee for the management of public affairs at Westminster, still kept military, in subordination to civil, authority, and hoped to make the most renowned captains who had appeared on the side of the Parliament instruments of his own aggrandisement. The "Self-denying Ordinance" was the death-struggle. If Cromwell had perished amidst the perils to which he was then exposed, St. John might have been Lord Protector instead of pining with envy for the rest of his days. He was little inferior to his rival in natural ability, and was far superior to him in intellectual acquirements. Nor would any scruples have obstructed his rise to sovereign sway, for he only loved a republic as he expected to rule it, and at the call of ambition he was always ready to change the religious faith which he professed. It did not suit his purpose to take part in the death of Charles I., but he was the murderer of the Earl of Strafford. Although it is fortunate for the liberties of England that the Parliament triumphed over Charles I., and St. John greatly contributed to this triumph, we cannot honour his memory as a true patriot, for he was crafty, selfish, cruel, and remorseless.

man, and Mrs. Elizabeth St. John daughter of the Right Honble Oliver St. John Ch. Justice of C. P., was married before said father and by him declared man and wife Febr 26. 1655-6, coram testibus non paucis venerabilibus et fide dignis."

CHAPTER XIV.

LIFE OF LORD PRESIDENT BRADSHAW.

CHAP. XIV.

Reason for noticing Lord President Bradshaw.

My collection of biographical sketches of Common Law Judges, of the first rank, would be imperfect were I to pass over him who presided at the most interesting trial which ever took place in England, although he was called Lord President instead of Lord Chief Justice,

"When Bradshaw bullied in a broad-brimm'd hat."

A.D. 1635—1640. His origin and professional progress.

He was born at Marple-hall, in Cheshire, and was the younger son of a respectable family, which had been settled there for many generations. I know nothing of his career till I find him a barrister of Gray's Inn, of considerable but obscure practice, and Judge of the Sheriff's Court in the City of London. Although well versed in his profession, he was a very dull man; and no one imagined that he could rise higher than the dignity which he had then acquired. His name was introduced into the commission of *oyer and terminer* at the Old Bailey, and, to ease the Judges, he was employed to try assaults and petty larcenies; but no highwayman or burglar would have submitted, without deep murmuring, to his jurisdiction.* He professed himself to be, and was, a very violent republican. He failed in an attempt to obtain a seat in the Long Parliament; but he was loud and active in supporting the parliamentary cause in the City of London. For this reason he was appointed junior counsel for the Commonwealth, and assisted in state prosecutions instituted against royalists.†

A.D. 1640. He is a strong republican.

A.D. 1644.

* Prisoners look very much to the rank of those who may pass sentence of death upon them. A Serjeant of great experience going the Oxford Circuit in the room of Lord Chief Justice Abbot, who was suddenly taken ill, a man capitally convicted, being asked if he had any thing to say why sentence of death should not be passed upon him, exclaimed, "Yes; I have been tried before a *Journeyman Judge*."

† Whit. 106.

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A.D. 1645.

The cruel sentence passed by the Star Chamber, in the year 1638, upon John Lilburn, by which he was to be pilloried, whipt, and imprisoned for life, being brought before the House of Lords, Bradshaw was assigned him as his counsel, and succeeded not only in getting a reversal of the sentence, but a compensation of 3000*l.* for his client, to be raised out of the sequestered estates of delinquents.*

He is employed as counsel for the Commonwealth. A.D. 1646.

When, under the "Self-denying Ordinance," the original set of the Commissioners of the Commonwealth Great Seal were to be removed, a vote passed the House of Commons that Bradshaw should be one of the new commissioners; but this was overruled by the Lords, of whose jurisdiction he had been in the habit of speaking disrespectfully.† Soon after, he was appointed Chief Justice of Chester.‡ He still went on distinguishing himself for his zeal in favour of the new *régime*, and his loud expression of impatience for the entire abolition of monarchy.

Oct. 11. 1648. He becomes a Serjeant.

At the great move in legal offices shortly before the King's trial, the House of Commons, which was now exercising the functions of all the officers of the Crown, ordered that there should be a new call of Serjeants, and "that Mr. Bradshaw, of Gray's Inn, be of the number." On the day of the solemnity, Lord Commissioner Whitelock, who was a much more moderate politician, advised him to be like his predecessor, celebrated by Chaucer, —

"A Serjeant-at-law, wary and wise."§

Trial of Charles I.

When the ordinance to constitute the HIGH COURT OF JUSTICE was first introduced into the House of Commons, Serjeant Bradshaw was named in it as an *assistant* only, but in a further stage of its progress he was promoted to the rank of *Commissioner*. It had been hoped that *éclat* would have been given to the approaching trial by Whitelock, Lord Keeper of the Great Seal,—Rolle, Lord Chief Justice of the King's Bench,—St. John, Lord Chief Justice of the Common Pleas,—or Wilde, Lord Chief Baron of the Exchequer, acting as Lord President of this tribunal, which was framed

* 3 St. Tr. 1315—1370.
† Whit. 224.
‡ Whit. 238.
§ Ib. 342. 353.

after the fashion of that invented by Queen Elizabeth for the condemnation of Mary Queen of Scots; but they all positively refused to take any part in a proceeding so contrary to the established forms of criminal procedure; although, if a bill of indictment had been found against Charles Stuart by a grand jury, and he had been arraigned and made to hold up his hand before a petty jury, in the usual form, some of them, probably, would not have hesitated, in the King's name, to try him and to pass sentence upon him. Bradshaw, either from wishing that he might escape the service altogether, or that in his absence his merits might be more freely discussed, did not attend the first meetings of the Commissioners held for arranging the preliminaries of the trial.

He is chosen President of the High Court of Justice.

On the 10th of Jan., 1649, "John Bradshaw, Serjeant-at-law, a commissioner of this court, was chosen President; who being absent, Mr. Say, one of the commissioners then present, was appointed president *pro tempore* until the said Serjeant Bradshaw should attend the said service."* "On the 12th of Jan., Serjeant Bradshaw, upon special summons, attended this court, and being, according to former order, called to take his place of President of the said court, made an earnest apology for himself to be excused; but therein not prevailing, in obedience to the desires and commands of this court he submitted to their order, and took his place accordingly. Thereupon the court ordered that he should have the title of LORD PRESIDENT, as well without as within the said court — against which title he pressed much to be heard to offer his exceptions, but was overruled."† Such is the official minute of the appointment of President. Lord Clarendon says,—

"To that office *one* BRADSHAW was chosen; a lawyer of Gray's Inn, not much known in Westminster Hall, though of good practice in his chamber, and much employed by the factious. He was a gentleman of an ancient family in Cheshire, but of a fortune of his own making. He was not without parts, and of great insolence and ambition. When he was first nominated, he seemed much surprised, and very resolute to refuse it; which he did in such a manner, and so much enlarging

* Minutes of the Court. † Ibid.

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A.D. 1649.

upon his own want of abilities to undergo so important a charge, that it was very evident he expected to be put to that apology. And when he was pressed with more importunity than could have been used by chance — with great humility he accepted the office, which he administered with all the pride, impudence, and superciliousness imaginable. He was presently invested in great state, and many officers and a guard assigned for the security of his person, and the Dean's house in Westminster given to him for ever for his residence and habitation; and a good sum of money, about 5000*l.*, was appointed to be presently paid to him, to put himself in such an equipage and way of living as the dignity of the office which he held would require. And now the Lord President of the High Court of Justice seemed to be the greatest magistrate in England." *

It is said that "Mr. Serjeant Bradshaw, the President, was afraid of some tumult upon such new and unprecedented insolence as that of sitting judge upon his King; and therefore, besides other defence, he had a thick big-crowned beaver hat, lined with plated steel, to ward off blows." †

Jan. 1649. His conduct during the trial.

We have a very full report of the whole trial; and, after attentively perusing it, I must say that the charge brought against Bradshaw of wanton brutality on this occasion is considerably exaggerated. The *act* of sitting in trial upon the King is to be regarded as a great atrocity; but this must not be confounded with the *manner* in which the proceeding was conducted. Assuming a court to be constituted, its authority must be maintained, and the steps must be taken which are necessary for bringing to a conclusion a trial commenced before it. The King's demeanour was most noble; and he

* Rebellion, iii. 373.

† Kennett, iii. 181. n. "This hat, with a Latin inscription upon it, is now to be seen in the Museum at Oxford." — *Ibid.* In the middle of the seventeenth century, the common law judges adhered to their *coifs*, or black cloth caps, which they still put on when they pass sentence of death; but the Lord Chancellor, and the Speaker of the House of Commons, wore a round high-crowned beaver hat. The full-bottom wig, and the three-cornered cocked hat, were introduced from France after the Restoration. Barristers' wigs came in at the same time — but very gradually, for the judges at first thought them so coxcombical that they would not suffer young aspirants to plead before them so attired. Who would have supposed that this grotesque ornament, fit only for an African chief, would be considered indispensably necessary for the administration of justice in the middle of the nineteenth century! When I argued the great Privilege Case, having to speak sixteen hours, I obtained leave to speak without a wig; but under the condition that "*this was not to be drawn into a precedent.*"

displayed such real dignity, such presence of mind, such acuteness, such readiness, such liberality of sentiment, and such touches of eloquence — that he makes us forget all his errors, his systematic love of despotic power, and his incorrigible bad faith. Instead of hurrying him to the scaffold, we eagerly desire to see him once more on the throne, in the hope that misfortune might at last induce him sincerely to submit to the restraints of a constitutional monarchy. But these are feelings which could not properly actuate the mind of a judge the very foundation of whose authority was questioned by the accused. Therefore it could be no aggravation of Bradshaw's crime, in accepting the office of President, that he said, "Sir, you have heard the charge read, and we expect that you will answer it;" or that, upon an explanation being required, he observed that "the authority of the Court could not be disputed." He certainly did, more than once, use language unnecessarily disrespectful, as when he talked of Charles being an "elected King," and exclaimed with a sneer, "Sir, how well you have managed your trust is known; your way of answer is to interrogate the Court, which beseems not you in this condition. How great a friend you have been to the laws and liberties of the people, let all England and the world judge. How far you have preserved the privileges of the people, your actions have spoke it; but truly, Sir, men's intentions ought to be known by their actions: you have written your meaning in bloody characters throughout the whole kingdom." However, on each of the three days when Charles was brought to the bar of the Court, he was courteously requested to plead, and he was never interrupted unless when he denied the authority of the judges to sit there. It is likewise remarkable that Bradshaw abstained from pronouncing with his own mouth the sentence "that the said Charles Stuart, as a tyrant, traitor, murderer, and public enemy to the good people of this nation, shall be put to death by the severing of his head from his body"— but ordered it to be read by the clerk, and then merely added, "the sentence now read and published is the act, sentence, judgment, and resolution of the whole Court;"— whereupon Cromwell, Ireton, Lord Grey de Groby, Ludlow, and the

Jan. 27.

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other regicides, stood up, as had been previously arranged, in token of their assent.

A.D. 1649.

Bradshaw afterwards, on the 29th of January, presided at a meeting of the Court, when it was resolved "that the *open street before Whitehall* is a fit place for executing the judgment against the King, and that the King be there executed on the morrow."* Bradshaw, as President, was the first of the fifty-nine who signed the fatal warrant, of which a fac simile may be seen on every book-stall.†

February. Trial of the Duke of Hamilton and other royalists before him.

His conduct was, I think, still more culpable on several trials that followed before the High Court of Justice. The Duke of Hamilton had fought at Worcester under the command of the King of Scots and by the authority of the Scottish parliament. Being taken in battle, he was to be considered, and he had been long treated, as a prisoner of war. Now he was arraigned before this tribunal, constituted by an ordinance of the English House of Commons,—on a charge of high treason against the people of England. He pleaded that although he had the English title of Earl of Cambridge, by which he was prosecuted, he was born and continued domiciled in Scotland, obliged to obey the king and parliament of that independent state, and that even in England there was no law by which as an English peer he could be so tried upon such a charge. But the Lord President Bradshaw laid down, that, though born in Scotland, the moment he crossed the border he was subject to the English law, and that by fighting against an army commissioned by the English parliament he was guilty of the crime of high treason. So sentence of death was passed upon him.

Next came four Englishmen, the Earl of Holland, the Earl of Norwich, Lord Capel, and Sir John Owen, taken prisoners by General Fairfax, who had declared to them that their lives should not be in danger. They urged, that in fighting for the King they could not be guilty of high

* It is very extraordinary that a controversy should have arisen as to whether the execution was in front or behind the Banqueting-house, in spite of this order, and contemporaneous prints, which exhibit the scaffold between the windows looking to the west, and show the populace looking up at it from Charing Cross.

† 4 St. Tr. 990—1155; Rebellion, iii. 384.; Whitelock, 366.

treason; and that, at any rate, the engagement of the parliamentary general was binding. Lord Capel, in particular, claimed as an English peer to be tried by his peers, according to his birthright:—

Lord President Bradshaw: "My Lord Capel, let me tell you you are tried before such Judges as the Parliament think right to assign you, and these Judges have already condemned a better man than yourself. As to the defence on the merits, the Parliament had become the supreme power in the state, and to levy war against the Parliament was treason. The supposed promise of General Fairfax was never ratified by the Parliament; and, at most, it could only exempt the prisoners from being tried before a council of war, without precluding any proceeding which might be necessary for the peace and safety of the kingdom."

They were all convicted. On a petition to the House of Commons for mercy, Owen was pardoned by a large majority, and the Earl of Norwich escaped by the casting voice of the Speaker. But, after a long debate on the Earl of Holland's case, there was a majority of one against him; and the friends of the Duke of Hamilton, and of Lord Capel, found so little support that they did not venture to divide the House. Accordingly, these three noblemen were executed as traitors, this being the first specimen of criminal procedure since the establishment of the new Republic. No state trial under the Stuarts shows such an utter contempt of the conventional forms of law and the eternal principles of justice.*

He is made Chancellor of the Duchy of Lancaster, &c.

As a recompense for the eminent services of Lord President Bradshaw, an ordinance passed for settling upon him 2000*l.* a year out of the forfeited estates of malignants†, he was appointed Chancellor of the Duchy of Lancaster‡, and he was raised to be a member of the Council of State.§

* 4 St. Tr. 1155—1236.; Rebellion, iii. 402.; Whitelock, 386.; Ludlow, 247.; Burnet's Hamiltons, 385.

† Whitelock, 420.

‡ Among the records of the office which I have now the honour to hold, I find the ordinance for the appointment of my distinguished predecessor: —

"An Act for the making of John Bradshawe, now Sergeant-at-law, and Lord President of the Council of State, Chancellor of the Duchy and County Palatine of Lancaster.

"Be it enacted by the present Parliament, and by the authority of the same, that John Bradshaw, Serjeant at law, Lord President of the Council of State

§ Whitelock, 529.

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We must, in fairness, allow that he now acted his part with consistency and courage. A friend to pure democracy,

A.D. 1650.

by authority of Parliament, shall be and is hereby nominated, constituted, and appointed Chancellor of the Duchy of Lancaster, and Chancellor of the County Palatine of Lancaster, and Keeper of the respective Seals (appointed by the authority aforesaid) for the said Duchy and County Palatine; to hold, execute, and enjoy the said offices and places, and all powers, jurisdictions, and authorities lawfully belonging to the same; and also to enjoy and receive all such fees, privileges, advantages, and profits as are thereunto of right belonging, in as large and ample manner as any former Chancellor of the Duchy and County Palatine of Lancaster, and Keeper of the Seals of the said Duchy and County Palatine, lawfully have held, exercised, and enjoyed the same, until the tenth day of August which shall be in the year of our Lord God 1650. And it is further enacted by the authority aforesaid, that the clerk of the court of the said Duchy do forthwith prepare a patent in the name of *Custodes Libertatis Angliæ Authoritate Parliamenti*, in the usual form *mutatis mutandis*, to pass the seals of the said Duchy and County Palatine of Lancaster for granting of the said offices unto the said Lord President of the Council of State, according to this act. And it is further enacted, by the authority aforesaid, that the Commissioners of the Great Seal of England, or any one of them, shall receive into his or their hands the seals appointed by this present Parliament for the said Duchy and County Palatine, which commissioners or any two of them are thereupon to affix the said several seals to the said patent, and to administer to the said Lord President an oath for the due execution of the said places and offices in manner and form following; viz.: —

"'You shall swear that, to your cunning and knowledge, you shall do equal right and justice, and be indifferent in all matters to all manner of men that shall pursue and answer before you and the Council of the Duchy of Lancaster for the Commonwealth of England, and that which shall be most for the avail and profit of the Commonwealth and good rule and governance of the said Duchy, as far as right and conscience will require.'

"And after the said oath administered, the said Commissioners of the Great Seal, or any two of them, are to deliver the said patent and both the said seals of the said Duchy and County Palatine to the said Lord President, to be by him kept as Chancellor of the said Duchy and County Palatine."

There were several other ordinances, acts, and patents, continuing "Lord Bradshaw" in the office till Oliver's death.

The original of the following warrant under the sign manual of Richard is extant: —

"Our will and pleasure is, that you forthwith prepare fit for our signature a bill containing our grant and constitution of our trusty and well beloved John Bradshawe, Sergeant-at-law, of our especial grace, and in consideration of his faithful and acceptable services to the publique, to be Chancellor of the County Palatine of Lancaster of us and our successors, and also Keeper of the Seal of us and our successors for the said office, provided or to be provided. And also to be Chancellor of the Duchy of Lancaster of us and our successors, and Keeper of the Seal of us and our successors for the said office, provided or to be provided; with our grant unto him the said John Bradshaw of the aforesaid offices respectively, &c. so long as he shall therein well demean himself, &c. Given at Whitehall the 5th day of December, 1658."

The bill was prepared for signature, and was presented to and signed by his Highness Richard Lord Protector; and a patent was accordingly sealed, bearing date the 16th of December, 1658. The draft is indorsed "Lord Bradshawe's Patent of Chancellor of the County and Duchy of Lancaster," and he is therein described as "our trusty and well beloved John Bradshawe, Sergeant-at-law, Chief Justice of Chester, Montgomery, Denbigh, and Flint."

The proceedings of the Duchy Court, during the Chancellorship of "Lord Bradshaw," exhibit great regularity. The business of the Court was consider-

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He opposes Cromwell. April 20. 1653.

he strenuously opposed the efforts of Cromwell to engross all the powers of the state into his own hands, and even on the violent dissolution of the Long Parliament he remained unappalled. Although he had not a seat in that assembly, he availed himself of an opportunity to assert his independence as a member of the Council of State. In the afternoon of the day which saw the "bauble" forcibly removed from the table of the House of Commons, he called a meeting of his colleagues at Whitehall, and he had just taken the chair when the Lord General, entering, said, —

"'Gentlemen, if ye are here as private individuals, ye are welcome; but if as a Council of State, ye must know that the Parliament is dissolved, and with it also the Council.' 'Sir,' replied Bradshaw, with great spirit, 'we have heard what you did at the House this morning, and before many hours all England will know it. But, sir, you are mistaken to think that the Parliament is dissolved. No person under heaven can dissolve them but themselves. Therefore take you notice of that.' After this protest he withdrew."*

Resistance by physical force to Oliver, become Lord Protector, President Bradshaw found to be impossible; but he refused to acknowledge the usurper's authority, and he eagerly thwarted his measures. He was not admitted to Barebone's parliament, which was nominated by the executive government; but, a new parliament being called in 1554, on the excellent reformed model imitated by Lord Grey, he was returned one of the four members for his native county, and was at the top of the poll.† At the commencement of the session —

"Lord President Bradshaw was very instrumental in opening the eyes of many young members who had never before heard their interest so clearly stated and asserted; so that the commonwealth party increased daily, and that of the sword lost ground. Cromwell, being informed of these transactions by his creatures, and fearing lest he should be deposed by a vote of this assembly

able, and many very important decrees were pronounced by him, as well in original suits as upon appeal from the Vice-Chancellor.

Some attempts were made during the Commonwealth to abolish the Duchy and County Palatine of Lancaster; but they continued, with all their immunities and privileges, till the Restoration.

* Whitelock, 554.; Leicester's Journal, 139.; Hutchinson, 332.; Burton's Diary, iii. 98.

† 3 Parl. Hist. 1428.

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A.D. 1653.

from the throne which he had usurped, caused a guard to be set on the House early in the morning, and required the members to attend him in the Painted Chamber. There he acquainted them that none should be permitted to sit who did not subscribe to the Government by a single person. So soon as this visible hand of violence appeared to be upon them, most of the eminent asserters of the liberty of their country withdrew themselves, being persuaded they should best discharge their duty to the nation by this way of expressing their abhorrence of his tyrannical proceedings."

Cromwell, afraid of Bradshaw's secret plots, wished to come to an open rupture with him, and, summoning him to Whitehall, required him to take out a new commission for his office of Chief Justice of Chester. *Bradshaw:* "Sir, I require no new commission, and I will take none. I hold the office by a grant from the parliament of England, in the terms *quam diu se bene gesserit.* And whether I have carried myself with that integrity which my commission exacts from me, I am ready to submit to a trial by twelve Englishmen to be chosen by yourself." He resolved to go his circuit as usual, unless he should be prevented by force; and a collision was expected. "But it was thought more advisable," says Ludlow, "to permit him to execute his office, than, by putting a stop to his circuit, to make a breach with those of the long robe whose assistance was so necessary to the carrying on of Cromwell's design."*

A.D. 1659. His effort to restore the Republic.

Bradshaw remained in a state of sulky opposition during the remainder of Oliver's protectorate, refusing a peerage and other lures that were held out to win him over. On the accession of Richard he had again hopes of seeing a democratical republic established. In consequence, he accepted a seat in the Council of State, and he allowed himself to be returned as a member for Cheshire to the new parliament.† He rejoiced to find that the Cromwell dynasty was set aside, and for a short time there was a hope for the good cause.

June.

The Commonwealth having been again proclaimed, he agreed to be a commissioner of the great seal, with Terryll and Fountain, two violent republicans; and he triumphantly swore to be "true to this Commonwealth, without a single

* Mem. 216. 220.

† 3 Parl. Hist. 1531.

person, kingship, or House of Lords." But in a few weeks he had the mortification to see the supreme power again in the hands of the military, and his health suffered severely from the anguish of his spirit.

Sept. 1659. At a meeting of the Council, Colonel Sydenham, having tried to justify the violent dispersion of the Parliament on the plea that it had been rendered necessary by a particular call of Divine Providence, "the Lord President Bradshaw, who was then present, though by long sickness very weak and much extenuated, yet animated by his ardent zeal and constant affection to the common cause, upon hearing those words, stood up and interrupted him, declaring his abhorrence of that detestable action, and telling the Council that 'being now going to his God he had not patience to sit there to hear this great name so openly blasphemed;' he thereupon departed to his lodgings, and withdrew himself from public employment." *

His death. He languished till the 31st of October, when he expired — pleased with the thought of being removed to another scene of existence before the irresistible reaction which he deplored had produced the restoration of the Stuart line. In Whitelock's Memorials the entry of his death concludes with these words: "a stout man, and learned in his profession — no friend to monarchy."

The most wonderful testimony in his favour is from Milton, who is said to have been recommended by him to Cromwell for the place of Latin secretary, and in his "Defensio pro Populo Anglicano," thus extols him: —

Panegyric upon him by Milton. "John Bradshaw — a name which Liberty herself, in every country where her power is acknowledged, has consecrated to immortal renown — was descended, as is well known, from a distinguished family. The early part of his life he devoted to the study of the laws of his country. Having become a profound lawyer, an eloquent advocate, and a zealous asserter of the rights of the people, he was employed in important state affairs, and frequently discharged with unimpeachable integrity the duties of a Judge. When at length selected by the Parliament to preside at the trial of the King, he did not decline this most dangerous task: to the science of the law, he had brought a liberal disposition, a

* Ludlow, 277.

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A.D. 1659.

lofty spirit, sincere and unoffending manners; thus qualified, he supported that great and unprecedentedly fearful office, exposed to the threats and to the daggers of innumerable assassins, with so much firmness, such gravity of demeanour, such presence and dignity of mind, that he seemed to have been formed and appointed immediately by the Deity himself, for the performance of that deed which the Divine Providence had long before decreed to be accomplished in this nation; and so far has he exceeded the glory of all former tyrannicides, as it is more humane, more just, more noble, to pass a lawful sentence upon a tyrant, than to put him to death like a wild beast. Ever eager to discover merit, he is equally munificent in rewarding it. Delighted to dwell on the praises of others, he studiously suppresses his own." *

After his death he is attainted and executed as a traitor.

His death before the Restoration saved him from the fate which befell other regicides. But, contrary to the sentiment that "English vengeance wars not with the dead," an act of parliament was passed to attaint him; and both Houses made an order "that the carcases of Oliver Cromwell, John Bradshaw, and Henry Ireton, (whether buried in Westminster Abbey, or elsewhere,) be with all expedition taken up, and drawn upon a hurdle to Tyburn, and there hanged up in their coffins upon the gallows there some time, and after that buried under the said gallows." A contemporary historian gives the following account of the ceremony: —

"Thursday, January 30. 1660–1., the odious carcases of Oliver Cromwell, John Bradshaw, and Henry Ireton, were taken out of their graves, drawn upon sledges to Tyburn, and, being pulled out of their coffins, there hanged at the several angles of the triple

* "Est Joannes Bradscianus (quod nomen libertas ipsa, quâcúnque gentium colitur, memoriæ sempiternæ celebrandum commendavit) nobili familiâ, ut satis notum est, ortus; unde patriis legibus addiscendis primam omnem ætatem sedulò impendit: dein consultissimus causarum et disertissimus patronus, libertatis et populi vindex acerrimus, et magnis reipublicæ negotiis est adhibitus, et incorrupti judicis munere aliquotiès perfunctus. Tandèm utì Regis judicio presidere vellet a senatu rogatus, provinciam sanè periculosissimam non recusavit. Attulerat enim ad legum scientiam ingenium liberale, animum excelsum, mores integros ac nemini obnoxios; unde illud munus, omni propè exemplo majus ac formidabilius, tot sicariorum pugionibus ac minis petitus, ità constantèr, ità gravitèr, tantà animi cum præsentiâ ac dignitate gessit átque implevit, ut ad hoc ipsum opus, quod jàm olim Deus edendum in hoc populo mirabili providentiâ decreverat, ab ipso numine designatus atque factus videretur; et tyrannicidarum omnium gloriam tantùm superaverit, quantò est humanius, quantò justius ac majestate plenius tyrannum judicare, quàm injudicatum occidere. Benè merentes quoscúnque nemo citiùs aut libentiùs agnoscit, neque majore benevolentiâ prosequitur; alienas laudes perpetuò prædicare, suas tacere solitus."

tree till sun-set; then taken down, beheaded, and their loathsome trunks thrown into a deep hole under the gallows. Their heads were afterwards set upon poles on the top of Westminster Hall."*

As a pendant to the well-known story that Charles I.'s head had been substituted for Cromwell's, and underwent this indignity, a narrative was given to the world that the remains of President Bradshaw, being carried to America before the Restoration, were deposited in that Land of Liberty; and the following inscription is to be read on a cannon at Annapolis: —

His epitaph.

"Stranger!
Ere thou pass, contemplate this cannon;
nor regardless be told,
that near its base lies deposited the dust of
JOHN BRADSHAW,
who, nobly superior to selfish regards,
disposing alike the pageantry of courtly splendour,
the blast of calumny,
and the terror of regal vengeance,
presided in the illustrious band of heroes and patriots
who fairly and openly adjudged
CHARLES STUART,
tyrant of England,
to a public and exemplary death;
thereby presenting to the amazed world,
and transmitting down through applauding ages,
the most glorious example
of unshaken virtue, love of freedom,
and impartial justice,
ever exhibited on the blood-stained theatre
of human action.
Oh! Reader!
pass not on till thou hast blessed his memory;
and never — never forget
THAT REBELLION TO TYRANTS
IS OBEDIENCE TO GOD."

* Gesta Britannorum, by Sir George Wharton. London, 1667.

CHAPTER XV.

CHIEF JUSTICES OF THE KING'S BENCH FROM THE RESTORATION TILL THE APPOINTMENT OF SIR MATTHEW HALE.

CHAP. XV.

A.D. 1660. Difficulty of filling the Bench at the Restoration.

AT the restoration of Charles II. it was considered necessary to sweep away the whole of the Judges from Westminster Hall, although, generally speaking, they were very learned and respectable, and they had administered justice very impartially and satisfactorily.* Immense difficulty was found in replacing them. Clarendon was sincerely desirous to select the fittest men that could be found, but from his long exile, he was himself entirely unacquainted with the state of the legal profession, and, upon making inquiries, hardly any could be pointed out whose political principles, juridical acquirements, past conduct, and present position entitled them to high preferment. The most eminent barristers on the royalist side had retired from practice when the civil war began, and the new generation which had sprung up had taken an oath to be faithful to the Commonwealth. One individual was discovered, Sir Orlando Bridgman — eminent both for law and for loyalty. Early distinguished as a rising advocate, he had sacrificed his profits that he might assist the royal cause by carrying arms, and, refusing to profess allegiance to those whom he considered *rebels*, he had spent years in seclusion, — still devoting himself to professional studies, in which he took the highest delight. At first, however, it was thought that he could not properly be placed in a higher judicial office than that of Chief Baron of the Exchequer, — and the Chiefships of the King's Bench and Common Pleas were allowed to remain vacant some months, *puisnies* being appointed in each court to carry on the routine business.

* Their decisions are still of as much authority on legal questions as those of courts sitting under a commission from the Crown; and they were published with the sanction of the Chancellor and all the Judges in the reigns of Charles II. and James II.

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At last a Chief Justice of England was announced, — SIR ROBERT FOSTER; and his obscurity testified the perplexity into which the Government had been thrown in making a decent choice. He was one of the very few survivors of the old school of lawyers which had flourished before the troubles began; he had been called to the degree of Serjeant-at-law so long ago as the 30th of May, 1636, at a time when Charles I., with Strafford for his minister, was ruling with absolute sway, was imposing taxes by his own authority, was changing the law by proclamation, and hoped never again to be molested by parliaments. This system was condemned and opposed by the most eminent men at the English bar, but was applauded and supported by some who conscientiously thought that all popular institutions were mischievous; and by more who thought that court favour gave them the best chance of rising in the world. Foster is supposed to have defended ship-money, — the cruel sentences of the Star Chamber, — the billeting of soldiers to live at free quarters, and other flagrant abuses, — as well from a sincere love of despotism as from a desire to recommend himself to those in power.

Sir Robert Foster Chief Justice.

His professional career.

At the time when tyranny had reached its culminating point, he was appointed a Puisne Judge of the Court of Common Pleas. Luckily for him, Hampden's case had been decided before his appointment, and he was not impeached by the Long Parliament. When the civil war broke out, he followed the King; and afterwards assisted in attempting to hold a Court of Common Pleas at Oxford, but sat alone, and his tribunal was without advocates or suitors. An ordinance passed the House of Commons for removing him from his office, and, on account of his excessive zeal in the royal cause, he was obliged to compound for his estate by paying a very large fine.

He is made a Puisne Judge by Charles I. Jan. 27. 1640.

After the King's death, he continued in retirement till the Restoration. He is said to have had a small chamber in the Temple, and, like Sir Orlando Bridgman and Sir Jeffrey Pelham, to have practised as a chamber counsel, chiefly addicting himself to conveyancing.

His conduct during the Commonwealth.

The first act of the Government of Charles II. was to

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A. D. 1660. He is reinstated by Charles II.

reinstate Foster in his old office. There was a strong desire to reward his constancy with fresh honours; but he was thought unfit to be raised higher, and the office of Chief Justice of the King's Bench could not be satisfactorily filled up.

Only six Common Law Judges had been appointed when the trials of the regicides came on. Foster, being one of them, distinguished himself for his zeal; and, when they were over, all scruples as to his fitness having vanished, he, who a few months before, shut up in his chamber that he might escape the notice of the Roundheads, never expected any thing better than to receive a broad piece for preparing a conveyance according to the recently invented expedient of "lease and release," was constituted the highest Criminal Judge in the kingdom.*

Oct. 22.

He presided in the Court of King's Bench for two years. Being a deep black-letter lawyer, he satisfactorily disposed of the private cases which came before him, although he was much perplexed by the improved rules of practice introduced while he was in retirement, and he was disposed to sneer at the decisions of Chief Justice Rolle, a man in all respects much superior to himself. In state prosecutions he showed himself as intemperate and as arbitrary as any of the Judges who had been impeached at the meeting of the Long Parliament.

He brings about the conviction and execution of Sir Harry Vane.

To him chiefly is to be imputed the disgraceful execution, as a traitor, of one who had disapproved of the late King's trial; who was included in the present King's promise of indemnity from Breda†; in whose favour a petition had been presented by the Convention Parliament; who was supposed to be expressly pardoned by the answer to that petition‡;

* "M. T. 12 C. II. Memorandum que le primer jour de cest terme Sir Robert Foster, un des Justices del common Bank, feut jure Chiefe Justice del Banco Regis. Il prisant les serements del allegiance et supremacy generlerant (come lauter Justices font) queux serements fueront lege a luy hors del Rolle mesme et nemy hors del livre le Seigneur Chancellor seant sur le Banke et Foster esteant en le Court et nemy al barr."

† Charles II., in his *Declaration* from Breda, had promised that he should "proceed only against the immediate murderers of his royal father."

‡ In answer to the address of the two Houses of the Convention Parliament to spare the lives of Vane and Lambert, the Lord Chancellor reported "His

but who had incurred the inextinguishable hatred of the Cavaliers by the part he had taken in bringing about the conviction of the Earl of Strafford.* Sir Henry Vane the younger, after lying two years in prison, during which the shame of putting him to death was too strong to be overcome, was at last arraigned for high treason at the King's Bench bar. As he had actually tried to save the life of Charles I., the treason charged upon him was for conspiring the death of Charles II., whose life he would have been equally willing to defend. The indictment alleged this overt act, "that he did take upon him the government of the forces of this nation by sea and land, and appointed colonels, captains, and officers." The Crown lawyers admitted that the prisoner had not meditated any attempt upon the natural life of Charles II., but insisted that, by acting under the authority of the Commonwealth, he had assisted in preventing the true heir of the monarchy from obtaining possession of the government, and thereby, in point of law, had conspired his death, and had committed high treason. Unassisted by counsel, and browbeaten by Lord Chief Justice Foster, he made a gallant defence; and, besides pointing out the bad faith of the proceeding after the promises of indemnity and pardon held out to him, contended that, in point of law, he was not guilty, on the ground that Charles II. had never been in possession of the government as King during any part of the period in question; that the supreme power of the state was then vested in the Parliament, whose orders he had obeyed; that he was in the same relation to the exiled heir as if there had been another king upon the throne; and that the statute of Henry VII., which was only declaratory of the common law and of common sense, expressly provided that no one should ever be called in question for obeying, or defending by force of arms, a king *de facto*, although he had usurped the throne.

Majesty grants the desire of the said petition;"—the ancient form of passing acts of parliament. The ultra-Cavalier House of Commons which followed desired Vane's death, but could not alter the law or abrogate the royal promise.

* Burnet. says, "The putting Sir Henry Vane to death was much blamed; yet the great share he had in the attainder of the Earl of Strafford, but, above all, the great opinion there was of his parts and capacity to embroil matters again, made the Court think it necessary to put him out of the way."

CHAP. XV.

A.D. 1662.

He concluded by observing that the whole English nation might be included in the impeachment.

Foster, C. J.: "Had there been another king on the throne, though an usurper, you might have been exempted by the statute from the penalties of treason. But the authority you recognised was called by the rebels either 'Commonwealth' or 'Protector,' and the statute takes no notice of any such names or things. From the moment that the martyred Sovereign expired, our lord the King that now is must be considered as entitled to our allegiance, and the law declares that he has ever since occupied his ancestral throne. Therefore obedience to any usurped authority was treason to him. You talk of the sovereign power of Parliament; but the law knows of no sovereign power except the power of our sovereign lord the King.* With respect to the number against whom the law shall be put in force, that must depend upon his Majesty's clemency and sense of justice. To those who truly repent he is merciful; but the punishment of those who repent not, is a duty we owe both to God and to our fellow men."

A verdict of *guilty* being returned, the usual sentence was pronounced; but the King, out of regard to his own reputation, if not to the dictates of justice and mercy, was very reluctant to sanction the execution of it till Chief Justice Foster, going the following day to Hampton Court to give him an account of the trial, represented the line of defence taken by the prisoner as inconsistent with the principles of monarchical government, and said that the supposed promises of pardon were by no means binding, "for God, though oft-times promising mercy, yet intends his mercy only for the penitent." The King, thus wrought on, notwithstanding his engagement to the contrary, signed the death-warrant, and Vane was beheaded on Tower Hill, saying with his last breath, "I value my life less in a good cause than the King does his promise." Mr. Fox, and other historians, consider this execution "a gross instance of tyranny," but have

* Sir Henry Vane, in an account of his case which he has left us, says, "On the day of my arraignment an eminent person was heard to say, 'I had forfeited my head by what I had said that day before ever I came to my defence:' what that should be I know not, except my saying in open court 'sovereign power of Parliament;' but whole volumes of lawyers' books pass up and down the nation with that title, 'SOVEREIGN POWER OF PARLIAMENT.'"—6 St. Tr. 186. This "eminent person" was most likely the Chief Justice of the Court of King's Bench.

allowed Chief Justice Foster, who is mainly responsible for it, to escape without censure.* CHAP. XV.

The arbitrary disposition of this Chief Justice was strongly manifested soon after, when John Crook and several other very loyal Quakers were brought before him at the Old Bailey for refusing to take the oath of allegiance: — A.D. 1662. His cruel treatment of Quakers.

Foster, C. J.: "John Crook, when did you take the oath of allegiance?" *Crook:* "Answering this question in the negative is to accuse myself, which you ought not to put me upon. '*Nemo debet seipsum prodere.*' I am an Englishman, and I ought not to be taken, nor imprisoned, nor called in question, nor put to answer but according to the law of the land." *Foster, C. J.:* "You are here required to take the oath of allegiance, and when you have done that, you shall be heard." *Crook:* "You that are Judges on the bench ought to be my counsel, not my accusers." *Foster, C. J.:* "We are here to do justice, and are upon our oaths; and we are to tell you what is law, not you us. Therefore, sirrah, you are too bold!" *Crook:* "*Sirrah* is not a word becoming a judge. If I speak loud, it is my zeal for the truth, and for the name of the Lord. Mine innocency makes me bold." *Foster, C. J.:* "It is an evil zeal." *Crook:* "No, I am bold in the name of the Lord God Almighty, the everlasting Jehovah, to assert the truth and stand as a witness for it. Let my accuser be brought forth." *Foster, C. J.:* "Sirrah, you are to take the oath, and here we tender it you." *Crook:* "Let me be cleared of my imprisonment, and then I will answer to what is charged against me. I keep a conscience void of offence, both towards God and towards man." *Foster, C. J.:* "Sirrah, leave your canting." *Crook:* "Is this canting, to speak the words of the Scripture?" *Foster, C. J.:* "It is canting in your mouth, though they are St. Paul's words. Your first denial to take the oath shall be recorded; and on a second denial, you wear the penalties of a *præmunire*, which is the forfeiture of all your estate, if you have any, and imprisonment during life." *Crook:* "I owe dutiful allegiance to the King, but cannot *swear* without breaking my allegiance to the King of Kings. We dare not break Christ's commandments: who hath said, SWEAR NOT AT ALL; and the apostle James says, 'Above all things, my brethren, *swear not.*'"

Crook, in his account of the trial, says, "The Chief Justice thereupon interrupting, called upon the executioner

* 6 St. Tr. 119—202.

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to stop my mouth, which he did accordingly with a dirty cloth and a gag." The other Quakers following Crook's example, they were all indicted for having a second time refused to take the oath of allegiance; and, being found *guilty*, the Court gave judgment against them, of forfeiture, imprisonment for life, and moreover, that they were "out of the King's protection,"—whereby they carried about with them *caput lupinum*, and might be put to death by any one as noxious vermin.*

He presides at the trial of Tonge and others for treason.

The last trial of importance at which Chief Justice Foster presided was that of Thomas Tonge and others, charged with a plot to assassinate the King. General Ludlow says that this was got up by the Government to divert the nation from their ill humour, caused by the sale of Dunkirk; the invention being "that divers thousands of ill-affected persons were ready under his command to seize the Tower and the City of London, then to march directly to Whitehall in order to kill the King and Monk, with a resolution to give no quarter,—and after that to declare for a Commonwealth."† The case was proved by the evidence of supposed accomplices, which was held to be sufficient without any corroboration. The Chief Justice seems to have been very infirm and exhausted; for thus he summed up:—

"My masters of the jury, I cannot speak loud to you: you understand this business, such as I think you have not had the like in your time: my speech will not give me leave to discourse of it. The witnesses may satisfy all honest men: it is clear that they all agreed to subvert the government, and to destroy his Majesty: what can you have more? The prisoners are in themselves inconsiderable; they are only the outboughs; but if such fellows are not met withal, they are the fittest instruments to set up a Jack Straw and a Wat Tyler; therefore you must lop them off, as they will encourage others. I leave the evidence to you: go together."

The prisoners being all found guilty, Chief Justice thus passed sentence upon them,—

"You have committed the greatest crime against God, our King, and your country, and against every good body that is in

* 6 St. Tr. 201—226. † Memoirs.

this land; for that capital sin of high treason is a sin inexpiable, and, indeed, hath no equal sin as to this world. Meddling with them that are given to change, hath brought too much mischief already to this nation; and if you will commit the same sin, you must receive the same punishment, for happy is he who by other men's harms takes heed."

They were all executed, protesting their innocence.*

The Chief Justice went a circuit after this trial, in the hope that country air would revive him. However, he became weaker and weaker, and, although much assisted by his brother Judge, he with great difficulty got to the last assize town. From thence he travelled by slow stages to his house in London, where, after languishing for a few weeks, he expired, full of days, and little blamed for any part of his conduct as a Judge, however reprehensible it may appear to us, trying it by a standard which he would have thought only fit to be proposed by rebels.† He was brought up among lawyers who deemed all resistance to power treasonable or seditious, and his zeal against those who professed liberal opinions may be excused when we consider the excesses which he had seen committed under pretence of a love of freedom. His cruelty to the poor Quakers admits of least apology; but it should be remembered that, till the Revolution of 1688, religious toleration was neither practised nor professed by any dominant faction; and if the Quakers, by the spread of fanaticism, had got the upper hand, there can be no doubt that they would have absolutely forbidden all Christians to take an oath, and would perhaps have punished with the penalties of *præmunire* the offence of using the names of months or days taken from the heathen mythology.

His death.

It has been said that "he was in a distinguished manner serviceable to the public in punishing the felonies and other outrages which proceeded from an old disbanded army, and in restraining the over-great mercy of the King in his frequent pardons granted to such sort of criminals."‡

* 6 St. Tr. 225—274. † 1 Sid. 153.

‡ Echard, p. 812 a; Peck's Desiderata Curiosa, vol. ii. p. 543.

I ought to have mentioned that Sir Robert Foster was the youngest son of Sir Thomas Foster, Knt., one of the Justices of the Court of Common Pleas in the time of King James I. He was called to the bar by the Society of the

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Sir Robert Hyde Chief Justice.

On the death of Sir Robert Foster, Lord Clarendon thought that he might fairly do a job for an aged kinsman, of respectable if not brilliant reputation; and he appointed Sir ROBERT HYDE Chief Justice of the King's Bench. They were cousins-german, being grandsons of Lawrence Hyde, of West Hatch, in the county of Wilts, and nephews of Sir Nicholas Hyde, Chief Justice of the King's Bench in the commencement of the reign of Charles I. The Hydes were the most distinguished race of the robe in the 17th century. Robert's father was likewise a lawyer of renown, being Attorney General to Anne of Denmark, Queen of James I., and he had twelve sons, most of whom followed their father's profession. Robert seems to have been a very quiet man, and to have got on by family interest and by plodding. Although Edward, the future Chancellor, played such a distinguished part during the troubles,—first as a moderate patriot, and then as a liberal conservative,—Robert, the future Chief Justice, was not in the House of Commons, nor did he enlist under the banner of either party in the field. Just before the civil war broke out, he was called to the degree of Sergeant-at-law, and he continued obscurely to carry on his profession during all the vicissitudes of the twenty eventful years between 1640 and 1660.

His obscure rise.

He is made a Puisne Judge.

At the Restoration he was made a Puisne Judge of the Common Pleas, and, acting under Chief Justice Bridgman, he acquitted himself creditably.*

Epitaph on Chief Justice Foster.

Inner Temple, and was "Summer Reader" of that house, 7 Charles I. He was buried at Egham, in Surrey. On a gravestone on the north side of the chancel there are these words: — "Here lyeth buried the body of Sir Robert Foster, Knt., late Lord Cheif Justice of the King's at Westminster, who deceased the 4th of October, 1663." Above, on the north wall, is a monument of alabaster, with a bust of a judge in his robes and cap; over him these arms: 1st and 4th argent, a cheveron vest between three bugle horns, sable; 2d and 3d argent on a bend sable, three martlets or; and below is this inscription: — "Memoriæ sacrum Robertus Foster miles filius minimus natu Thomæ Foster militis, unius Justiciarior. de Communi Banco tempore Domini Regis Jacobi, ac ipsemet Justiciarius de eodem Banco Regnantibus Carolo Primo et Carolo secundo, denique Banci Regis Justiciarius capitalis, obiit 4to die Octobris anno D'ni millesimo sexcentesimo sexagesima tertio; ætatis suæ 74."— *Manning's Surry*, p. 245.

* It is curious to observe that upon the Restoration the Judges were at first appointed for life, although the old form *durante bene placito* was soon restored. The following is Hyde's patent as a Justice of C. P.: — "Carolus Secundus, &c., Sciatis quod constituimus delectum et fidelem nostrum Robertus Hyde, servientem ad legem unum Justiciariorum nostrorum de Banco, habendm *quam diu se bene gesserit in eodem*, &c." — (1 Sid. 2.) "Memorandum que le darrein vacation puis le circuit, Sir Robert Foster, le Chief Justice del Banco Regis

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When he was installed Chief Justice of the King's Bench, Lord Chancellor Clarendon himself attended in court, and thus addressed him:—

Oct. 19. 1663. Lord Clarendon's address to him.

"It's a sign the troubles have been long, that there are so few Judges left, only yourself; and after so long suffering of the law and lawyers, the King thought fit to call men of the best reputation and learning, to renew the reverence due and used to the law and lawyers; and the King, as soon as the late Chief Justice was dead, full of days and of honours, did resolve on you as the ancientiest Judge left; and your education in this Court gives you advantage here above others, as you are the son of an eminent lawyer as any in his days, whose felicity was to see twelve sons, and you one of the youngest a Serjeant, and who left you enough, able to live without the help of an elder brother. For your integrity to the Crown, you come to sit here. The King and the kingdom do expect great reformation from your activity. For this reason, the King, when I told him Chief Justice Foster was dead, made choice of you. Courage in a judge is as necessary as in a general; therefore you must not want this to punish sturdy offenders. The genteel wickedness of duelling, I beseech you inquire into; the carriers of challenges, and fighters, however they escape death, the fining and imprisoning of them will make them more dread this Court than the day of judgment."

His answer.

Hyde, C. J.: "I had ever thought of the advice of the wise man, 'not to seek to be a judge, nor ask to sit in the seat of honour,' being conscious of my own defects and small learning. But, seeing his Majesty's grace, I shall humbly submit, and serve him with my life with all alacrity and duty. Sins of infirmity I hope his Majesty will pardon, and for wilful and corrupt dealings I shall not ask it. I attended in Coke's time as a reporter here; and as he said when he was made Chief Justice I say now, 'I will behave myself with all diligence and honesty.'" *

He hangs a printer for printing a libel.

This Chief Justice was much celebrated in his day for checking the licentiousness of the press. A printer named John Troyn, having printed a book entitled "Phœnix, or the Solemn League and Covenant," containing passages which were said to reflect upon the King, was arraigned before him at the Old Bailey on an indictment for high treason. The prisoner being asked how he would be tried, said, "I

mor. Et cest terme Sir Robert Hyde un des Justices del Co. Ba. fuit fait Cheife Justice de l'anco Regis."—(1 Sid.)

* 1 Keble, 562.

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desire to be tried in the presence of that God who is the searcher of all hearts, and the disposer of all things."

Hyde, L. C. J.: "God Almighty is present here, but you must be tried by him and your peers, that is, your country, or twelve honest men." *Prisoner:* "I desire to be tried by God alone." *L. C. J. Hyde:* "God Almighty looks down and beholds what we do here, and we shall answer severely if we do you any wrong. We are careful of our souls as you can be of yours. You must answer in the words of the law." *Prisoner:* "By God and my country."

It was proved clearly enough that he had printed the book, and some passages of it might have been considered libellous — but there was no other evidence against him, and he averred that he had unconsciously printed the book in the way of his trade.

Hyde, L. C. J.: "There is here as much villany and slander as it is possible for devil or man to invent. To rob the King of the love of his subjects, is to destroy him in his person. You are here in the presence of Almighty God, as you desired; and the best you can now do towards amends for your wickedness, is by discovering the author of this villanous book. If not, you must not expect, and, indeed, God forbid! there should be any mercy shown you." *Prisoner:* "I never knew the author of it." *Hyde, L. C. J.:* "Then we must not trouble ourselves. You of the jury, there can be no doubt that publishing such a book as this is as high treason as can be committed, and my brothers will declare the same if you doubt."

The jury having found a verdict of guilty, the usual sentence was pronounced by Lord Chief Justice Hyde, and the printer was drawn, hanged, and quartered accordingly.*

His sentence on the booksellers who published an account of the execution of the Regicides.

The next trials before his Lordship, although the charge was not made capital (as he said it might been been), were equally discreditable to him. Several booksellers were indicted for publishing a book which contained a simple and true account of the trial of the Regicides, with their speeches and prayers.

Hyde, L. C. J.: "To publish such a book is to fill all the King's subjects with the justification of that horrid murder. I will be bold to say no such horrid villany has been done upon the face of the

* 6 St. Tr. 513.

earth since the crucifying of our Saviour. To print and publish this is sedition. He that prints a libel against me as Sir Robert Hyde, and he that sets him at work, must answer it; much more when against the King and the state. *Dying mens' words*, indeed! If men are as villanous at their death as in their lives, may what they say be published as the words of dying men? God forbid! It is the King's great mercy that the charge is not for high treason."

The defendants, being found *guilty*, were sentenced to be fined, to stand several hours in the pillory, and to be imprisoned for life.*

In the fervour of loyalty which still prevailed, such doctrines and such sentences were by no means unpopular; and while Chief Justice Hyde was cried up as an eminent Judge by the triumphant Cavaliers, the dejected Roundheads hardly ventured to whisper a complaint against him. To the great grief of the one party, and, no doubt, to the secret joy of the other, who interpreted his fate as a judgment, his career was suddenly cut short. On the 1st of May, 1663, as he was placing himself on the bench to try a dissenter who had published a book recommending the "comprehension," that had been promised by the King's Declaration from Breda, while apparently in the enjoyment of perfect health, he dropped down dead.† His sudden death.

In consequence of this melancholy event, Lord Chancellor Clarendon was again thrown into distress by the difficulty of filling up the office of Chief Justice of the King's Bench, and he allowed it to remain vacant seven months. Only five years had yet elapsed since the Restoration, and no loyal lawyer of eminence had sprung up. At last the Chancellor thought he could not do better than promote SIR JOHN KELYNGE, then a *puisne*, to be the head of the Court. The appointment was considered a very bad one; and some accounted for it by supposing that a liberal contribution had been made towards the expense of erecting "Dunkirk House," which was exciting the admiration and envy of the town,—while others asserted that the collar of S.S. had Sir John Kelynge Chief Justice.

* 6 St. Tr. 514—564.

† 2 Sid. 2.; 1 Keb. 861.; 1 Sid. 275.; Sir Thomas Raymond, 189.; Sir R. C. Hoare's Wiltshire, ii. p. 144.

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been put round the neck of the new legal dignitary by the Duchess of Cleveland. I believe that judicial patronage had not yet been drawn into the vortex of venality, and that Clarendon, left to the freedom of his own will, preferred him whom he considered the least ineligible candidate. But we cannot wonder at the suspicions which were generally entertained, for Sir John Kelynge's friends could only say in his favour that he was a "violent Cavalier," and his enemies observed that "however fit he might have been to *charge* the Roundheads under Prince Rupert, he was very unfit to *charge* a jury in Westminster Hall."

I can find nothing of his origin, or of his career, prior to the Restoration; and I am unable to say whether, like some loyal lawyers, he actually had carried arms for the King, or, like others, he had continued obscurely to practise his profession in London. The first notice I find of him is by himself, in the account which he has left us of the conferences of the Judges at Serjeants' Inn, preparatory to the trial of the Regicides, when he says he attended that service as junior counsel for the Crown. He might have been employed from a notion that he would be useful in solving the knotty points likely to arise *, or, (what is quite as likely,) without any professional reputation, he might have got a brief by favour, in a case which was to draw the eyes of the whole world upon all engaged in it.

He is junior counsel against the Regicides.

Oct. 1660.

When the trials came on, he was very busy and bustling, and eagerly improved every opportunity of bringing himself forward. Before they were over, he took upon himself the degree of Serjeant-at-law, and, to his unspeakable delight, he was actually intrusted with the task of conducting the prosecution against Colonel Hacker, who had commanded the guard during the King's trial and at his execution. He learnedly expounded to the jury that the treason consisted in "compassing and imagining the King's death," and that

He conducts the prosecution against Colonel Hacker.

* Among these was "whether the act of severing the head of Charles I. from his body could be alleged to have been committed in his own lifetime," and "whether it should be laid as against the peace of the late or of the present King?" Judge Mallet made the confusion more confounded by maintaining that by the law of England a day is indivisible; and that as Charles II. certainly was our lawful King during a part of that day, no part of it had been in the reign of Charles I.

the overt acts charged of *condemning him* and *executing him* were only to be considered evidence of the evil intention. He then stated the facts which would be proved by the witnesses, and concluded by observing —

"Thus did he keep the King a prisoner, to bring him before that Mock Court of Injustice; and was so highly trusted by all those miscreants who thirsted for the King's blood, that the bloody warrant was directed to him to see execution done. Nay, gentlemen, he was on the scaffold, and had the axe in his hand." *Hacker:* "My Lords, to save your Lordships trouble, I confess that I was upon the guard, and had a warrant to keep the King for his execution." (The original warrant being shown to him, he admitted it.) *Kelynge:* "After you had that warrant brought to you, did you, by virtue of it, direct another warrant for the execution of the King, and take his sacred Majesty's person from the custody of Colonel Tomlinson?" *Hacker:* "No, sir!" *Kelynge:* "We shall prove it."

Colonel Tomlinson was then examined, and detailed the circumstances of the execution, showing that Colonel Hacker had conducted the King to the scaffold under the original warrant, — what had been taken for a fresh warrant being a letter written by him to Cromwell, then engaged in prayer for the King's deliverance with General Fairfax.

Kelynge: "We have other witnesses, but the prisoner hath confessed enough. We have proved that he had the King in custody, and that at the time of the execution he was there to manage it. What do you say for yourself?" *Hacker:* "Truly, my Lord, I have no more to say for myself but that I was a soldier and under command. In obedience to those set over me I did act. My desire hath ever been for the welfare of my country." *L. C. Baron:* "This is all you have to say for yourself?" *Hacker:* "Yes, my Lord." *L. C. Baron:* "Then, Colonel Hacker, for that which you say for yourself that you did it by command, you must understand that no power on earth could authorise such a thing. Either he is guilty of compassing the death of the King, or no man can be said to be guilty."

Of course he was convicted and executed.*

Serjeant Kelynge was soon after promoted to be a King's Serjeant; and in that capacity took a prominent part in the

A.D. 1662.

* 5 St. Tr. 947—1363.

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trial of Sir Henry Vane, who, not being concerned in the late King's death, was tried for what he had subsequently done in obedience to the Parliament, then possessed of the supreme power of the state. To the plea that his acts could not be said to be against the peace of Charles II., who was then in exile, Kelynge admitted that if another sovereign, although an usurper, had mounted the throne, the defence would have been sufficient; but urged that the throne must always be full, and that Charles II., in legal contemplation, occupied it while *de facto* he was wandering in foreign lands and ambassadors from all the states of Europe were accredited to Oliver, the Lord Protector.*

He is appointed a Puisne Judge of the King's Bench. June 18. 1663.

Kelynge having suggested this reasoning, which was adopted by the Court, and on which Vane was executed as a traitor, he was, on the next vacancy, made a Puisne Judge of the King's Bench. When he was to take his seat, Lord Chancellor Clarendon attended in that court, and thus addressed him: —

Lord Clarendon's address to him.

"Mr. Serjeant Kelynge: The King's pleasure is to call you to be a Judge in this high court of law — not in the usual circumstance of death or vacancy, but in the place of one living. This is the great gift of God unto kings to judge the people, and the King cannot delegate a greater part of his prerogative than by granting commission to a subject to judge his fellows. There is no more misbecoming thing for a Christian man than seeking to be thus like God, to dispose of the blood of his subjects; but I absolve you, Mr. Serjeant, from any thing of this kind: you could have no thoughts of it till I brought the King's pleasure to you, and then you received it only with such alacrity as was fit for his service. This the King did in sight of your great ability and sufferings and assurances of constancy in his service; and therefore the people will have great cause to thank his Majesty. If this cannot introduce a love and veneration in the people of the Government, nothing but desolation can be expected."

Kelynge: "Although I cannot but return hearty thanks for so great favours, yet when I look on this supreme court and its jurisdiction I am much daunted. My twenty years' silence may have contributed to my inability, although not to hinder my industry. I acknowledge the effluxes of his Majesty's favour to be only by

* 6 St. Tr. 119—202.

your Lordship's goodness, from which I beg that his Majesty may know with how much gratitude and humility I submit myself to his pleasure." *

While Kelynge was a Puisne Judge, he made up, by loyal zeal and subserviency, for his want of learning and sound sense; but, from a knowledge of his incompetency, there was a great reluctance to promote him on the death of Lord Chief Justice Hyde. Sir Matthew Hale was pointed out as the fittest person to be placed at the head of the common law; but Lord Clarendon had not the liberality to raise to the highest dignity one who had sworn allegiance to the Protector, and there being no better man whom he could select, who was free from the suspicion of republican taint, he fixed upon the "violent Cavalier."

He is made Chief Justice.

Luckily there were no speeches at his installation. On account of the dreadful plague which was then depopulating London, the courts were adjourned to Oxford. "There, Kelynge, Puisne Judge, was made Chief Justice, and, being sworn at the Chancellor's lodging, came up privily and took his place in the logic school, where the Court of King's Bench sat. The business was only motions — to prevent any concourse of people. In London died the week before, 7165 of the plague, beside Papists and Quakers." †

The new Chief Justice even exceeded public expectation by the violent, fantastical, and ludicrous manner in which he comported himself. His vicious and foolish propensities broke out without any restraint, and, at a time when there was little disposition to question any who were clothed with authority, he drew down upon himself the contempt of the public and the censure of Parliament.

His vanity in wearing the collar of S.S.

He was unspeakably proud of the collar which he wore as Chief Justice, this alone distinguishing him externally from the puisnies, a class on whom he now looked down very haughtily. In his own report of the resolutions of the Judges

* 1 Keble, 526.

† 1 Keble, 943.; Sir T. Raym. 139. "M. T. 1665. En eco term Sir lo Kelynge Justice de Banco Regis fuit fait Chief Justice la en lieu de Hyde. Mes Ieo ne fui al Oxford pr. reason del strictness del lieu et danger del infecon."—(1 Sid. 274.)

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prior to the trial of Lord Morley for murder, before the House of Lords, he considers the following as the most important: —

"We did all, una voce, resolve that we were to attend at the trial in our scarlet robes, and the Chief Judges in their collars of S.S. — *which I did accordingly.*" *

He convicts of high treason apprentices who tried to put down disorderly houses.

There having been a tumult in an attempt by some apprentices to put down certain disorderly houses in Moorfields, which were a great nuisance to the neighbourhood, and cries that no such houses should be tolerated, Chief Justice Kelynge, considering this "an *accroachment* of royal authority," directed those concerned in it to be indicted for HIGH TREASON; and, the trial coming on before him at the Old Bailey, he thus laid down the law to the jury: —

"The prisoners are indicted for levying war against the King. By levying war is not only meant when a body is gathered together as an army, but if a company of people will go about any public reformation, this is high treason. These people do pretend their design was against brothels; now for men to go about to pull down brothels, with a captain and an ensign, and weapons, — if this thing be endured, *who is safe?* † It is high treason because it doth betray the peace of the nation, and *every subject is as much wronged as the King*; for if every man may reform what he will, no man is safe; therefore the thing is of desperate consequence, and we must make this for a public example. There is reason we should be very cautious; we are but newly delivered from rebellion, and we know that that rebellion first began under the pretence of religion and the law; for the Devil hath always this vizard upon it. We have great reason to be very wary that we fall not again into the same error. Apprentices in future shall not go on in this manner. It is proved that Beasely went as their captain with his sword, and flourished it over his head, and that Messenger walked about Moorfields with a green apron on the top

* 6 St. Tr. 769.

† There must here have been a titter among the junior members of the bar in contemplation of the perils to which the reverend sages of the law had been exposed. I remember when a celebrated house in Chandos Street was burnt down in the night, and several lives were lost, it happened that term began next day, and, all the Judges being assembled at the Chancellor's, Lord Chief Baron Macdonald (I suppose having lately read this judgment of Chief Justice Kelynge) exclaimed, "It gives me heartfelt pleasure, my dear brethren, to see you all here quite safe."

of a pole. What was done by one was done by all; in high treason, all concerned are principals."

So the prisoners were all convicted of high treason; and I am ashamed to say that all the Judges concurred in the propriety of the conviction except Lord Chief Baron Hale, who, as might be expected, delivered his opinion that there was no treason in the case, and treated it merely as a misdemeanor.* Such a proceeding had not the palliation that it ruined a personal enemy, or crushed a rival party in the state, or brought great forfeitures into the Exchequer; it was a mere fantastic trick played before high heaven to make the angels weep.

His conduct on the circuit.

When Chief Justice Kelynge was upon the circuit, being without any check or restraint, he threw aside all regard to moderation and to decency. He compelled the grand jury of Somersetshire to find a true bill contrary to their consciences, —reproaching Sir Hugh Wyndham, the foreman, as the head of a faction, and telling them "that they were all his servants, and that he would make the best in England stoop."

He fines and imprisons jurymen.

Some persons were indicted before him for attending a conventicle; and, although it was proved that they had assembled on the Lord's Day with Bibles in their hands, *without Prayer-books*, they were acquitted. He thereupon fined the jury 100 marks a-piece, and imprisoned them till the fines were paid. Again, on the trial of a man for murder, who was suspected of being a dissenter, and whom he had a great desire to hang, he fined and imprisoned all the jury because, contrary to his direction, they brought in a verdict of *manslaughter*. Upon another occasion, (repeating a coarse jest of one whom he professed to hold in great abhorrence,)—when he was committing a man in a very arbitrary manner, the famous declaration in Magna Charta being cited to him, that "no freeman shall be imprisoned except by the judgment of his peers, or the law of the land," the only answer given by my Lord Chief Justice of England was to repeat, with a loud voice, Cromwell's rhyme, "MAGNA CHARTA — MAGNA ——A!!!"†

His compliment to Magna Charta.

* 6 St. Tr. 879—914.

† Ante, p. 432, 433.

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At last, the scandal was so great that complaints against him were brought by petition before the House of Commons, and were referred to the grand committee of justice. After witnesses had been examined, and he himself had been heard in his defence, the committee reported the following resolutions: —

Dec. 1667. Proceedings against him in the House of Commons.

"1. That the proceedings of the Lord Chief Justice in the cases referred to us are innovations in the trial of men for their lives and liberties, and that he hath used an arbitrary and illegal power which is of dangerous consequence to the lives and liberties of the people of England.

"2. That, in the place of judicature, the Lord Chief Justice hath undervalued, vilified, and condemned MAGNA CHARTA, the great preserver of our lives, freedom, and property.

"3. That the Lord Chief Justice be brought to trial, in order to condign punishment in such manner as the House shall judge most fit and requisite."

The matter assuming this serious aspect, he petitioned to be heard at the bar of the House in his own defence. Lord Chief Baron Atkyns, who was then present, says, "he did it with that great humility and reverence, that those of his own profession and others were so far his advocates that the House desisted from any farther prosecution." His demeanour seems now to have been as abject as it had before been insolent, and he escaped punishment only by the generous intercession of lawyers whom he had been in the habit of browbeating in the King's Bench.*

His death.

He was abundantly tame for the rest of his days; but he fell into utter contempt, and the business of the Court was done by Twisden, a very learned judge, and much respected, although very passionate. Kelynge's collar of S.S. ceased to have any charms for him; he drooped and languished for some terms, and on the 9th of May, 1671, he expired, to the great relief of all who had any regard for the due administration of justice. No interest can be felt respecting the place of his interment, his marriages, or his descendants.

* 1 Siderfin, 338.; 6 St. Tr. 992—1019.; Lord Campbell's Speeches, 175. 337.

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His Reports.

I ought to mention, among his other vanities, that he had the ambition to be an author; and he compiled a folio volume of decisions in criminal cases, which are of no value whatever except to make us laugh at some of the silly egotisms with which they abound.*

* Such is the propensity to praise the living and the dead who fill or have filled high judicial offices, that we have the following notice of the death of Sir John Kelynge, as if he had been a Hale, a Holt, or a Mansfield: — "May 10th, 1671. This day died Sir John Keeling, Knt., Lord Chief Justice of the King's Bench, about two of the clock of the morning, being the first day of Easter Term. He died much lamented for his great integrity and worth, after a long weakness and decay." — *Echard*, p. 878 b.; *Peck's Desid. Cur.* 549.

CHAPTER XVI.

LIFE OF LORD CHIEF JUSTICE HALE, FROM HIS BIRTH TILL THE RESTORATION OF CHARLES II.

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Happy transition to a meritorious Chief Justice.

We pass from one of the most worthless of Chief Justices to one of the most pure, the most pious, the most independent, and the most learned—from Keylinge to Sir Matthew Hale. Imperfections will mark every human character; but I have now to exhibit a rare combination of good qualities, and a steady perseverance in good conduct, which raised an individual to be an object of admiration and love to all his contemporaries, and have made him be regarded by succeeding generations as a model of public and private virtue. I cannot be satisfied, therefore, with giving merely a slight sketch of the more remarkable passages of his life; and it will be my fault if his whole career, from his cradle to his grave, is not found both interesting and instructive.

Origin of Sir Matthew Hale.

He had the advantage of being born in the middle rank of life, receiving a liberal education, and depending on his own exertions for distinction. We know nothing of his paternal ancestors higher than his grandfather, who made a considerable fortune, for those days, as a clothier, at Wotton-under-Edge, in Gloucestershire, and divided it equally among his five sons. Robert, the second of these, was educated for the bar, and married Joan, the daughter of Matthew Poyntz, Esq., of Alderley, a branch of the noble family of the Poyntzes of Acton. The subject of the present memoir was the only child of this marriage, and was born at Alderley, in Gloucestershire, on the 1st of November, 1609. Here Mr. Robert Hale lived penuriously on a small estate which he had purchased with his patrimony, assisted by the fortune of his wife. He might have obtained great success in his profession, but he had given it up from scruples of conscience, being much

shocked with legal fictions—above all, with "giving colour in pleading, which, as he thought, was to tell a lie." *

He is brought up a Puritan.

While the future Chief Justice was only in his fifth year, he had the misfortune to lose both his parents; and he became the ward of his kinsman, Mr. Kingscot, of Kingscot, who was of an ancient family, but was a noted Puritan. By this gentleman he was put to school with a clergyman of the same rigid principles, who is called by the orthodox Anthony Wood "one Mr. Staunton, the scandalous vicar of Wotton-under-Edge." † The intention was that young Hale should not only be imbued with a proper horror of the rites and ceremonies of the Anglican discipline, which those inclined to the Genevese denominated "flat popery," but that he should himself be bred a divine, and should actively engage as a minister in propagating the true reformed faith. In consequence, religious impressions were now made upon him which never were effaced. For a time, as we shall find, he frequented stage plays, and, despising all peaceful pursuits, he prized only military glory. But when these illusions had passed away, his manners and his modes of thinking were strongly tinctured, to his dying day, by his early training under a Puritanical teacher.

Hale at school.

While at school he had a high reputation for diligence, and here he must have formed the studious habits which, amidst great temptations, and after some youthful errors, secured his advancement and his fame.

A.D. 1625. At the University.

He was not sent to the University till he was sixteen. Then he was entered of Magdalene Hall, Oxford, and placed under the tuition of Obadiah Sedgwick, who, though a noted Puritan, was deeply imbued with classical learning. In the next generation the Puritans in general undervalued human learning, but in the early part of the 17th century they could exhibit a greater number both of eminent mathematicians and of distinguished scholars than those who under Laud wished to approximate to Rome.

* Burnet's Life of Hale, p. 2. This is a mysterious contrivance to enable a defendant to refer the validity of his title to the judges instead of the jury, by introducing an untrue allegation respecting an entry under a pretended title, which does not deceive or injure any one.—3 Bl. Com. 309.

† Athen.

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A.D. 1625—1629. He becomes fond of stage-plays, and a fop.

Our undergraduate, simple in his attire, and rather ascetic in all his habits, devoted himself very steadily, for some terms, to the writings of Aristotle and Calvin, being regular in his attendance, not only in chapel, but at prayer-meetings in private houses, — till a strolling company of actors coming to Oxford, "he was so much corrupted by seeing many plays that he almost wholly forsook his studies." All of a sudden, there seemed to be a complete transformation of his character. "He loved fine clothes, and delighted much in company; and, being of a strong and robust body, he was a great master at all those exercises that required much strength. He also learned to fence and handle his weapons, in which he became so expert that he worsted many of the masters of those arts." A troop of sycophants, eager to minister to his vanity, surrounded him; but he escaped from their toils, without being ruined in his fortune or becoming a misanthrope. His fencing-master having said to him, "I can teach you no more, for you are now better at my own trade than myself," he answered, "I promise to give you the house you live in, as my tenant, if you can break my guard and hit me: now do your best, for I will be as good as my word." The fencing-master, being really much superior to him in skill, after a little skirmishing, struck him a palpable hit on the head. Mr. Hale performed his promise, and unhesitatingly gave him the house, "not unwilling at that rate to learn so early to distinguish flattery from truth."* We are told that, amidst all his dissipation, he "still preserved his purity, and a great probity of mind." But at this time, from the company which he kept and the occupations which he followed, he abandoned all notion of being a clergyman, and he resolved to be a soldier. Whilst under this martial ardour, it so happened that the tutor of his college was proceeding to the Low Countries as chaplain to the renowned Lord Vere. Hale, hearing of his destination, was about to accompany him, that he might *trail a pike* under the Prince of Orange. His relations tried to dissuade him from this enterprise, advising him, if he had contracted a distaste for the Church, to follow the profession of his father. But he answered, —

He is about to serve abroad as a soldier.

* Burnet's Life of Sir Matthew Hale, p. 3.

"Tell not us of issue male,
Of simple fee and special tale,
Of feoffments, judgments, bills of sale,
And leases:

"Can you discourse of hand-grenadoes,
Of sally-ports and ambuscadoes,
Of counterscarps, and palizadoes,
And trenches?"

Thus the pious and reverend Judge might have turned out a "Captain Dalgettie," passing as a mercenary from the service of one military leader to that of another, learning to swear strange oaths and to carouse "potations pottle-deep."

How he took to the study of the law.

From this fate he was saved by an unjust attempt to deprive him of a part of his patrimonial estate, and the commencement of a lawsuit against him. Before setting off for the Continent, he went to London to give instructions for his defence. His leading counsel was the learned Serjeant Glanville, with whom he had many consultations, and to whom he confided all his plans. This great lawyer succeeded in giving Hale's enthusiasm a new direction; and, pointing out the imminent danger to his religion and morals, as well as to his life, from a military career, and the good he might do, as well as the honour and riches he might acquire, by following the profession of the law, at last induced him to exclaim, "*Cedant arma togæ!*" Accordingly, on the 8th day of November, 1629, "Mattheus Hale, filius unicus et hæres Roberti Hale, generosi," was admitted a member of the Honourable Society of Lincoln's Inn, to which he was to become a bright ornament and a munificent benefactor.*

His vow never again to see a stage-play.

The theatre was the temptation he dreaded, and, believing that he could not enjoy this amusement in moderation, he began with making a vow, which he strictly kept, "never to see a stage-play again." Writing to his grandchildren seven-and-forty years after, he warns them against the frequenting of stage-plays, "as they are a great consumer of time, and do so take up the mind and phantasy that they render the ordinary and necessary business of life unacceptable

* The custom for law students to be first entered of an Inn of Chancery before being admitted of an Inn of Court, which had prevailed in Lord Coke's time, seems now to have become obsolete, and the Inns of Chancery were entirely abandoned to the attorneys.

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and nauseous;" going on to describe his own case, and how he had conquered his passion for this recreation.

His vow against drinking healths.

However, he continued to keep company with some of his old associates, and ran a serious risk of being again drawn into idle courses; till, at a merry-making, with other young students, at a village near London, one of the company drank so much as to fall down seemingly dead before them. "This did particularly affect Mr. Hale, who thereupon went into another room, and, shutting the door, fell on his knees, and prayed earnestly to God both for his friend, that he might be restored to life again, and that himself might be forgiven for giving such countenance to so much excess; and he vowed to God that he would never again keep company in that manner, or drink a health, while he lived. His friend recovered, and he most religiously observed his vow till his dying day; and, though he was afterwards pressed to drink healths, particularly the King's, which was set up by too many as a distinguishing mark of loyalty, and drew many into great excess after his Majesty's happy restoration, he would never dispense with his vow; though he was sometimes roughly treated for this, which some hot and indiscreet men called obstinacy."*

Hale at Lincoln's Inn.

He now abjured all gay company, and spent sixteen hours a day in study, laying down rules for himself, which are still extant, in his handwriting, and which show that, amidst all his ardour for the acquisition of knowledge, he never forgot his religious duties.† From being a noted fop since the

* Burnet, p. 5. In those times, the command we receive at public dinners, "Gentlemen, charge your glasses, BUMPERS!" and which we can sufficiently satisfy by holding up a glass which has long been empty, and joining in the "hip, hip, hurrah!" with "one cheer more," was then rigidly enforced; every man who was not under a vow being compelled to fill a bumper to every toast, and by reversing his glass to show that it was drained to the bottom. Sir Matthew Hale, in his advice to his grandchildren, says, "I will not have you begin or pledge any health, for it is become one of the greatest artifices of drinking, and occasions of quarreling, in the kingdom. If you pledge one health, you oblige yourself to pledge another, and a third, and so onwards; and if you pledge as many as will be drank, you must be debauched and drunk. If they will needs know the reason of your refusal, it is a fair answer, 'that your grandfather that brought you up, from whom, under God, you have the estate you enjoy or expect, left this in command with you, that you should never begin or pledge a health'"—(p. 156.). The expedient of putting little or no wine into the glass never seems to have been thought of.

† Burnet, p. 6. These Rules have been greatly too much praised: beyond their spirit of piety, they have little to recommend them.

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latter part of his residence at Oxford, he was remarkable for the slovenliness of his apparel; of which we have a proof from a danger he encountered of being forced into the wars, after his military mania had entirely subsided. Taking a walk one evening for his health, on Tower Hill, and meeting a press-gang, he was supposed, from his appearance, to be in a very low condition of life, and, being strong and well-built, he was seized as a fit person for the King's service. He would have been speedily shipped off for the West Indies, had it not been that luckily several students of Lincoln's Inn, who knew him, were passing by, and they vouching that he was of gentle degree, notwithstanding the tattered condition of his doublet and hose, he was set at liberty. He thereupon went to buy cloth for a plain new suit; and, making some difficulty as to price, the draper, who had heard much of his abilities and diligence from other customers, said, — "You shall have it for nothing, if you will promise me 100*l.* when you come to be Lord Chief Justice of England." He answered, "I cannot with a good conscience wear any man's cloth unless I pay for it." So he satisfied the draper, and carried away the cloth. They afterwards met, and recounted this conversation, in the reign of Charles II., when the law student had risen to be Chief Justice of England, and the draper to be an alderman of London.

A.D. 1630—1637. He is taken by a press-gang.

Hale continued to keep terms at Lincoln's Inn above seven years, undergoing labour at which, in our degenerate days, the most industrious would tremble; and before he was called to the bar he had professional knowledge which would furnish a good stock in trade for all Westminster Hall. He not only read over and over again all the Year-Books, and Reports, and law treatises in print, but, visiting the Tower of London, and other antiquarian repositories, he went through a course of records from the earliest times down to his own, and acquired a familiar acquaintance with the state and practice of English jurisprudence during every reign since the foundation of the monarchy. From his reading and researches he composed what he called a *Common-place Book;* but what may, in reality, be considered a CORPUS JURIS,

His mode of acquiring a knowledge of law.

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A.D. 1630—1637.

embracing and methodising all that an English lawyer, on any emergency, could desire to know.*

Nor did he, like the great bulk of English jurists, confine himself to our municipal law; he studied jurisprudence liberally and on principle, not as a mere money-making trade. He devoted himself to the study of the Roman law, saying that "a man could never understand law as a science so well as seeking it there;" and he lamented much that it was so little studied in England.†

His other studies.

He was likewise resolved not to be a mere lawyer, his maxim being that "no man could be absolutely master in any profession without having some skill in other sciences." Accordingly, he made great proficiency in arithmetic, algebra, and pure mathematics; he attended much to natural philosophy; he became well versed in anatomy; "and in his sickness he used to argue with his doctors about his distempers like one of their own profession." †

All these wonders he accomplished by a thrifty application of his time. None of it was wasted in vain amusements; and his repasts were so temperate, that immediately after them he was fit for any mental exertion. Change of study was his relaxation, and he forgot the fatigue of mastering a case in Plowden or Coke when he set to work on "the Torricellian experiment, and the rarification and condensation of the air." He would not haunt frivolous company, and he avoided epistolary correspondence as an unprofitable consumption of time. Yet he loved to converse with those from whom he might derive solid instruction; and he carried on a friendly intercourse with Selden, the illustrious antiquary, and Vaughan, who was one day, as Chief Justice, to acquire such renown by establishing the independence of juries.‡

His great patron was Noy, afterwards Attorney General,

* We still have it among his other MSS. in Lincoln's Inn, and I have examined it with admiration. Burnet says, "An eminent Judge of the King's Bench borrowed it of him when he was Lord Chief Baron. He unwillingly lent it, because it had been writ by him before he was called to the bar, and had never been thoroughly revised by him since that time. But the Judge having perused it, said, 'that though it was composed by him so early, he did not think any lawyer in England could do it better, except he himself would again set about it.'"

† Burnet, p. 8.

‡ Bushell's Case, 6 St. Tr. 967.

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now a patriot, and distinguished only for his deep learning and liberal accomplishments. Hale went by the name of "Young Noy," and might have found a short cut to fortune, when the patriotic lawyer, who had assisted in carrying the PETITION OF RIGHT, became the slave of an arbitrary Court; but our *débutant* preferred his independence to his interest, and refused to be concerned in manufacturing the writ of "ship-money."

Considering his wonderful proficiency, there can be little doubt that, if he had been so inclined, the usual period then prescribed for remaining *in statu pupillari* at the Inns of Court might have been abridged; but he looked for solid fame rather than early profit or notoriety, and he was not called to the bar till he was in the 28th year of his age.

He is called to the bar. A.D. 1637.

As soon as he had put on the long robe he was in full business; but he was at first chiefly employed as a consulting or chamber counsel. He had neither a natural flow of eloquence, nor boldness of manner, nor a loud voice. He therefore seems long to have been thought unfit for jury trials, or Star Chamber practice; and, even when retained on demurrers and special verdicts before the Judges in Westminster Hall, he was more eager to supply arguments and authorities to his leaders than to gain *éclat* for himself. When obliged to take the lead, he was an enemy to all eloquence or rhetoric in pleading. He said, "If the judge or jury had a right understanding, it signified nothing but a waste of time and loss of words; and if they were weak and easily wrought on, it was a more decent way of corrupting them by bribing their fancies, and biassing their affections: and wondered much at that affectation of the French lawyers in imitating the Roman orators in their pleadings, — for the oratory of the Romans was occasioned by their popular government, and the factions of the city, so that those who intended to excel in the pleading of causes were trained up in the schools of the Rhetors till they became ready and expert in that luscious way of discourse. He therefore pleaded himself always in few words, and home to the point." *

His early practice.

He began with the specious but impracticable rule of never

* Burnet, p. 40.

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A.D. 1637—1640.

pleading except on the right side — which would make the counsel to decide without knowing either facts or law, and would put an end to the administration of justice. "If he saw a cause was unjust, he for a great while would not meddle further in it but to give his advice that *it was so;* if the parties after that would go on, they were to seek another counsellor, for he would assist none in acts of injustice. Yet, afterwards, he abated much of the scrupulosity he had about causes that appeared at first view unjust."* He continued to plead with the same sincerity which he displayed in the other parts of his life; and he used to say, "It is as great a dishonour as a man is capable of to be hired, for a little money, to speak or to act against his conscience."†

Although he was laughed at by many for his peculiarities, his merit was fully appreciated by the discerning; and in the course of a few years he was at the very top of his profession. Still he was unassuming and courteous. "His modesty was beyond all example; for, where some men who never attained to half his knowledge have been puffed up with a high conceit of themselves, and have affected all occasions of raising their own esteem by depreciating other men, he, on the contrary, was the most obliging man that ever practised. If a young gentleman happened to be retained to argue a point of law, where he was on the contrary side, he would very often mend the objections when he came to repeat them, and always commend the gentleman if there were room for it; — and one good word of his was of more advantage to a young man than all the favour of the court."‡

Such was Hale's reputation, that, when the Long Parliament was about to assemble, both parties in the state were eager to enlist him in their ranks.

His conduct when the troubles broke out.

His conduct at this crisis has been much commended, but I must say that I think it was cowardly and selfish. If he

* Burnet, p. 46.

† Burnet pays him a compliment which shows a very lax state of feeling at the bar in those days: — "He abhorred those too common faults of misreciting evidences, quoting precedents or books falsely, or asserting things confidently, by which ignorant juries or weak judges are too often wrought on." The *over-confident assertion*, I fear, continues; but I have never known more than one counsel threatened with being obliged to "cite his cases on affidavit."

‡ Character of Hale by Lord Nottingham; Burnet, p. 57.

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A.D. 1640—1643.

had approved of the government by prerogative, which had prevailed for eleven years since parliaments had been discontinued, it was his duty to have allowed himself to be returned for a treasury borough, and gallantly to have defended the levying of benevolences, the legality of ship-money, and the atrocities of the Star Chamber and Court of High Commission. In his heart he was a lover of liberty and of the constitution: therefore he ought to have accepted the offer of a seat made to him by Pym, Hampden, and Whitelock, and to have assisted them in correcting abuses, and bringing delinquents to justice. But he declared himself neutral — saying that "he was resolved to follow the example of Pomponius Atticus, who had passed through a time of as much destruction as ever was in any age or state, without the least blemish on his reputation, and free from any considerable danger, being held in great esteem by all parties, and courted and favoured by them." He therefore not only would not serve in parliament, and refused all public employment, but avoided the very talking of news; and Burnet pays him this wretched compliment,—"he was sure never to provoke any by censuring or reflecting on their actions, for many that have conversed much with him have told me they never heard him once speak ill of any person." Calumny, censoriousness, and uncharitableness, are to be shunned; but the best interests of society require that bad actions should be censured in private society, as well as punished by the magistrate.

Qu. whether he was counsel for Lord Strafford?

It is said that Hale was "assigned counsel for the Earl of Strafford,"—but he never appeared for him in public with Lane and his other counsel, and, if he was at all concerned in the defence, it could only have been in preparing the answer to the articles of impeachment, or attending a consultation respecting the mode of opposing the bill of attainder. He certainly was one of the counsel for Archbishop Laud. The able argument of Herne, who was leader, to prove that nothing which the most reverend prisoner had said or done amounted to treason by any known law of the kingdom, was prepared by Hale. Serjeant Wilde contending that all the misdemeanors "accumulatively were tantamount to treason,"

Counsel for Laud.

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Herne replied (I know not whether prompted by his junior), "I crave your mercy, good Mr. Serjeant; I never understood before this time that two hundred couple of black rabbits will make a black horse." *

Hale was, soon after, counsel for Lord Macguire, one of the leaders of the Irish massacre; and argued against Prynne, with great depth of learning, the question "whether an Irish peer was liable to be tried by a jury in England for high treason committed in Ireland?" The prisoner was convicted and executed, but Hale by this defence acquired such reputation that he was employed in every following state prosecution while he remained at the bar.†

A.D. 1644. He takes the covenant, and sits in the Assembly of Divines at Westminster.

The cause of the Parliament gaining the ascendancy, Hale signed the SOLEMN LEAGUE AND COVENANT, and served as a member of the famous Assembly of Divines at Westminster who framed the standards of the true Presbyterian faith. At no period of his life did he consider any form of church government essential to the enjoyment of the blessings of the Gospel. The system which he had pledged himself to "extirpate" was only what he called "the rampant exclusiveness of a semi-popish hierarchy,"—and though he stoutly denied the necessity for episcopal ordination, and preferred the Presbyterian polity of the reformed churches abroad, he did not object to a modified episcopacy such as had been proposed by Archbishop Usher, and he never countenanced the wild doctrines of the Independents or Anabaptists.

A.D. 1645. He treats for the surrender of Oxford.

At the conclusion of hostilities, when Oxford alone stood out for the King, and there was great danger, from the fury of some of the parliamentary leaders, that this city might be laid in ashes, Hale was induced, by his affection for his ALMA MATER, to serve as one of the commissioners appointed to treat for its reduction. Accordingly, by his intercession, honourable terms were granted to the royal garrison, and the inestimable treasures contained in the public libraries were preserved. Notwithstanding his low-church tendencies, the members of the University always thought well of him for this good turn, and afterwards sent him to parliament as one of their representatives.

* 4 St. Tr. 315. 577. 586.

† 4 St. Tr. 702.

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A.D. 1648, 1649.

He was now most earnestly desirous to see an accommodation brought about between the King and the Parliament. He remained a decided friend to monarchy, although he was of opinion that the excesses of prerogative ought to be effectually restrained,—and he approved of the terms offered to Charles I. in the treaty of Newport, which he afterwards vainly attempted to make the basis of the restoration of Charles II. But Cromwell and the Independents became possessed of supreme power, which they were resolved to continue in their own hands, under pretence of establishing the reign of the saints on earth. Henceforth the "Blessed Martyr" showed a constancy and dignity which almost make us forget his past errors. "When brought to the infamous pageantry of a mock trial, Hale offered to plead for him with all the courage that so glorious a cause ought to have inspired; but was not suffered to appear, because the King refusing, as he had good reason, to submit to the court, it was pretended none could be admitted to speak for him." *

Tries to bring about a settlement between the King and the Parliament.

Qu. whether he was counsel for Charles I.?

Hale, having done his duty to his Sovereign, thought that it became him as a good citizen to submit to the government which Providence permitted to be established. Accordingly he took *the engagement* "to be true and faithful to the Commonwealth of England, without a King or House of Lords." This was substituted for the old oath of allegiance, and required only subscription without adjuration; but all persons were obliged to submit to it as a qualification to hold any office or employment, or publicly to exercise any profession.† Some blind idolaters of Hale represent that, refusing to conform, he always declared the exiled heir to the crown alone to be entitled to his obedience.‡ We know the contrary, however, from his own mouth. Appearing before the High Court of Justice as counsel for Christopher Love, he was asked by Lord President Bradshaw "whether he had taken the engagement?" and he answered, "My Lord, I have done it." §

Hale takes the engagement to the Commonwealth.

* Burnet, p. 11. There has been a controversy whether Hale really was counsel for Charles I., but we may safely believe that he was consulted as to the line of defence to be adopted, and that he advised his royal client resolutely to deny the jurisdiction of the Court.

† Scobell's Acts, 2nd January, 1649–50.

‡ Burnet, p. 12. § 5 St. Tr. 211.

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A.D. 1649—1652.

Vaughan followed a different course, ever refusing by act or speech to sanction what he called "rebellion" and "usurpation;" hiding his loyalty amidst the fastnesses of Wales,—never taking a fee from the commencement of the troubles till the Restoration,—and, when pressed to plead for those who wished to make use of his abilities, saying "It is the duty of an honest man to decline, as far as in him lies, owning jurisdictions that derive their authority from any power but their lawful prince."* On principle, however, it can make no difference for this purpose, whether, upon a revolution, the supreme power is vested in a new sovereign with the ancient title of our chief magistrate, or in a PROTECTOR; and the famous statute of Henry VII. makes us safe while we obey a king *de facto*. Instead of emigrating, or withdrawing from public life, it may be the duty of a good citizen, after having strenuously resisted the revolutionary movement, to adhere to a government which he condemns, and to do his utmost to soften its violence.†

Of a piece with Hale's supposed refusal to take the engagement to the Commonwealth, is the story of his having on the execution of Charles I. hid behind the wainscoting of his study his "Pleas of the Crown," to prevent their falling into ill hands, exclaiming, "There will be no more occasion for them until the King shall be restored to his right." In truth, the criminal law of the country remained almost entirely unchanged, and Hale was still constantly conversant with its administration at the bar and on the bench — requiring all the stores of his learning on this subject for his assistance.‡

He is counsel for all whom Cromwell prosecuted for state offences.

He had become, beyond competition, the first advocate in Westminster Hall, and he led with great boldness the defences of those who were prosecuted by the Protector for political offences. He particularly distinguished himself on the trial of the Duke of Hamilton, indicted for high treason because he had invaded England as leader of a Scottish army. The pleas were,—

* 6 St. Tr. 129.

† So thought Sir Michael Foster (4th Discourse); and so thought Edmund Burke.

‡ See Burnet, p. 13.; Williams's Life of Hale, p. 28.

"1. That he was born in Scotland and an alien in England, so as not to be triable here. 2. That he had acted in the name of the King of Scotland, and by the commands of the Parliament of that kingdom which he was bound to obey. 3. That he had capitulated under articles by which his personal safety was expressly stipulated for."

But, in spite of unanswerable reasoning, all these were overruled by the High Court of Justice, and the Duke was executed as a traitor.*

His defence of Christopher Love.

Hale's leaning towards Presbyterianism made him particularly zealous in defending Christopher Love, although Cromwell had declared that "he would not march into Scotland till he had the head of this apostle of the Covenant." For six days was the argument kept up on the pretended overt acts of treason charged, which were all shown to have no support by common law, statute, or ordinance. But on the seventh morning, "without so much as praying for the King, otherwise than that he might propagate the Covenant, he laid his head upon the block with as much courage as the bravest and honestest man could do in the most pious occasion." †

His defence of Lord Craven.

Hale's last appearance at the bar was in Lord Craven's case. Of this we have no account in the "Reports;" but Burnet, who had conversed with those who were present, says that "he then pleaded with such force of argument, that the Attorney General threatened him for appearing against the Government; when he answered, 'I am pleading in defence of those laws which you declare you will maintain and preserve, and I am doing my duty to my client—so that I am not to be daunted with threatenings.'" ‡

His generosity to the royalists.

It should likewise be related, that Hale not only was ready to render his best professional assistance to poor royalists without a fee, but "he also relieved them in their necessities, which he did in a way that was no less prudent than charitable, considering the dangers of that time; for he did often deposit considerable sums in the hands of a worthy gentleman of the King's party, who knew their necessities well, and was to distribute his charity according to his own dis-

* 4 St. Tr. 1155.
† Clarendon; 5 St. Tr. 268.
‡ Burnet, p. 11, 12.

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cretion, without either letting them know from whence it came, or giving himself any account to whom he had given it." *

A.D. 1652. Hale a law reformer under Cromwell.

In spite of this independent conduct, the leading men of the Commonwealth had great confidence in Hale, and they invited him to an undertaking which might have been of inestimable benefit to the community. Since the reign of Edward I. there had hardly been any change in the laws or in the modes of administering justice in England, and they had become quite unsuited to the altered circumstances of the country. Whitelock, and other enlightened lawyers who were members of the Long Parliament, were eager for legal reform, but they were thwarted by ignorant enthusiasts who proposed what was impracticable and absurd; and even Oliver himself, when any objection was made to the abolition of existing processes without the substitution of any others for the protection of property or innocence, complained of a combination of lawyers whom he abused as the "sons of Zeruiah." A very reasonable suggestion was now offered,—that such matters might be much better discussed in private, and that they should be referred to a mixed commission of lawyers and others who were not members of the House of Commons. There were joined with him the fanatical Hugh Peters, and several psalm-singing military officers, who were for destroying our existing system "root and branch," and substituting for it the Mosaic law as expounded in Leviticus. However, Hale was supported by a majority of enlightened jurists, and with their assistance he drew up the heads of all the great legal improvements which have since been introduced, and of some for which public opinion is not even yet quite prepared—such as a general registration of deeds affecting real property. Ordinances for carrying on legal proceedings in the English language, and for abolishing tenure in chivalry, with all its burthensome incidents, were accordingly passed; but these reforms, being interrupted by the sudden dissolution of the Long Parliament, could not be advantageously resumed during the troubles which followed, and upon the Restoration were viewed with dislike, under

April 19. 1653.

* Burnet, p. 12.

the notion that they proceeded from puritans and republicans.*

A.D. 1653.

Hale was not returned to Barebone's Parliament, and he must have viewed with alternate grief and mirth the absurd proceedings of its members, till, convinced of their own incapacity, they voluntarily surrendered up their authority.

Dec. 12.

Cromwell was soon after acknowledged as Lord Protector, holding his office for life, with power to name his successor; and the monarchy might be considered as re-established. Hale approved of this arrangement—although he would have been still better pleased with the recall of the ancient line under conditions to secure public freedom.

Dec. 20. Hale becomes a Judge under Cromwell.

At this crisis came an offer of the office of a Judge in the Court of Common Pleas to Hale, who a few months before had been raised to the degree of a Serjeant, the writ for his elevation running in the names of "the Keepers of the Liberties of the People of England." I suspect very much that, for the purpose of conforming as much as possible to Restoration ideas and language, the motives and reasonings on which this very laudable judicial appointment was proposed and accepted have been a good deal misrepresented. On the one hand, it has been said that Cromwell, observing how stoutly Hale defended all state offenders, had no object but to deprive those whom he wished to prosecute of an able advocate; whereas I see no reason to doubt that the Protector proceeded on the principle "*detur digniori*," selecting for his good qualities the most learned, able, and honourable man to be found in the profession of the law. On the other hand, the "scruples" of the Serjeant must have been considerably exaggerated: "Mr. Hale," says Burnet, "saw well enough the snare laid for him; and though he did not much consider the prejudice it would be to himself to exchange the easy and safer profits he had by his practice for a Judge's place, which he was required to accept of, yet he did deliberate more on the lawfulness of taking a commission from usurpers; but

* We have not yet done justice to the moderate and wise men who appeared in England during the Commonwealth. Their prudence contrasts very strikingly with the recklessness which has marked the proceedings of revolutionary leaders in all other countries.

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having considered well of this, he came to be of opinion *that it being absolutely necessary to have justice and property kept up at all times, it was no sin to take a commission from usurpers, if he made no declaration of his acknowledging their authority* — WHICH HE NEVER DID." Now it is quite certain that Hale had previously acknowledged the Commonwealth "WITHOUT KING OR LORDS," and that he did so still more solemnly when he was sworn into office, and when he made the declaration of fidelity on taking his seat as a member of the House of Commons. If all are "usurpers" who hold supreme power without hereditary right, King William III., Queen Anne, and King George I. are to be inscribed in this class, although Hale would not have hesitated to obey them as lawful sovereigns. I believe that he at this time regarded Cromwell in the same light — for we must judge by his principles and his actions, and not by speeches afterwards conveniently put into his mouth. Some pretend that, to overcome the hesitation and reluctance which Cromwell now encountered, he made the famous declaration, "Well! if I cannot rule by red gowns, I will rule by red coats." But the Lord Chief Justice of the King's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, with several of the Puisne Judges, had expressed their willingness, on the King's execution, to continue in their offices; the vacancies of those who resigned had been immediately filled up from among the Serjeants; and there were plenty of candidates for the bench in Westminster Hall, to drive away all apprehension of the introduction of martial law for lack of ermined Judges.

Hale's promotion seems to have taken place in the ordinary fashion, and for several years he regularly performed all the duties of his office, sitting in the Court of Common Pleas in term time — going the circuits twice a year, and, without any misgiving, trying criminals at the assize towns as well as at the Old Bailey in London. Some time afterwards he abstained from trying prisoners — but this was after he had quarrelled with the Government respecting the administration of the criminal law — and both sides were equally will-

ing that he should confine himself to the decision of civil causes: —

A.D. 1654. March. His independent conduct as a Criminal Judge.

"A trial was brought before him at Lincoln, concerning the murder of one of the townsmen who had been of the King's party, and was killed by a soldier of the garrison there; he was in the fields with a fowling-piece on his shoulder, which the soldier seeing, he came to him and said, 'It was contrary to an order the Protector had made, that *none who had been of the King's party should carry arms*,' and so he would have forced it from him; but as the other did not regard the order, so being stronger than the soldier, he threw him down, and having beat him, he left him; the soldier went into the town, and told one of his fellow-soldiers how he had been used, and got him to go with him and lie in wait for the man, that he might be revenged on him: they both watched his coming to town, and one of them went to him to demand his gun, which he refusing, the soldier struck at him, and, as they were struggling, the other came behind and ran his sword into his body, of which he presently died. It was in the time of the assizes, so they were both tried: against the one there was no evidence of forethought felony, so he was only found guilty of manslaughter, and burned in the hand; but the other was found guilty of murder: and though Colonel Whaley, that commanded the garrison, came into the court and urged that the man was killed only for disobeying the Protector's orders, and that the soldier was but doing his duty, yet the Judge regarded both his reasonings and his threatenings very little, and therefore he not only gave sentence against him, but ordered the execution to be so suddenly done, that it might not be possible to get a reprieve, which he believed would have been obtained if there had been time enough granted for it." *

I must say that this haste was a very unjustifiable interference with the prerogative of mercy lodged, according to the constitution which he had sworn to respect, in the Lord Protector.

On another occasion he defied his Highness, not only with spirit, but with perfect propriety. A government prosecution coming on for trial at the assizes, Hale received information that the jury had not been fairly named. To get at the truth he questioned the sheriff, who said, "I refer all such matters to the under-sheriff." The under-sheriff acknowledged that the jury had been returned by Cromwell. The Judge there-

* Burnet, p. 13, 14.

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upon cited the statute whereby all juries ought to be returned "by the sheriff or his lawful officer;" and, this not being done, he dismissed the jury, and would not try the cause. When he came back to London the Protector, in a passion, severely censured him, saying "You are not fit to be a Judge." The only answer was, "Sir, what your Highness has said is indeed very true."

His last disgust as a Criminal Judge was while he was trying some Anabaptists, who had rushed into a church and disturbed a congregation assembled to receive the sacrament, according to the new rubric, after the Genevese fashion. He intended to treat these religionists with severity, though they were much favoured by the ruling powers; and he said, "It is intolerable for men who pretend so highly to liberty of conscience to go and disturb others — especially those who have the encouragement of the law on their side." The words were hardly out of his mouth when a *nolle prosequi* was produced, which put a stop to the proceedings before him — upon which he declared that "he would meddle no more with the trials on the Crown side."*

April. He abstains from acting as a Criminal Judge, with Cromwell's consent.

Yet, when Penruddock was about to be arraigned before a special commission at Exeter, for high treason in levying war against the Lord Protector †, a Government messenger came to Hale's house at Alderley, where he was then enjoying his vacation, and summoned him to attend. He refused to go, exclaiming, "The four terms and two circuits are enough, and the little interval that is between is little enough for my private affairs." Burnet observes that "he thought it was not necessary to speak more clearly; but if he had been urged to it, he would not have been afraid of doing it."‡ We must suppose, therefore, that by a silent understanding, with which both parties were well pleased, for their mutual convenience, Hale henceforth abstained from acting as a Criminal Judge under Cromwell; and that he is free from the absurdity of supposing that he might with a good conscience settle the right to an estate of 20,000*l.* a year,—but that he would be impiously acting under an usurper, if he tried a petty larceny, or the oligation on a parish to repair a high-

* Burnet, 15. † 5 St. Tr. 767. ‡ Burnet, 15.

way. His conduct would have been more manly if he had continued fearlessly to perform the whole of his duty as an English Judge.

We are now to see Hale as a legislator. The Protector, who was the first to establish an incorporating union between all parts of what we now call THE UNITED KINGDOM, summoned representatives from England, Scotland, and Ireland. He was likewise the first to reform the House of Commons, for he disfranchised the rotten boroughs, and directed that representation should be according to the population and wealth of the constituent bodies. Five members were to be returned for Gloucestershire; and the inhabitants, proud of their countryman, Judge Hale, expressed a strong wish that he would allow himself to be put up as a candidate. He declared that he would not solicit votes, and that he would be at no expense, but that if he were returned he would serve. There being no House of Lords for the Common Law Judges to attend, it was considered that there was no objection to their sitting in the House of Commons. Hale attended at the hustings on the day of election, and was at the head of the poll. We are told that "the Earl of Berkeley defrayed the charges of his entertainment, and girt him with his own sword;" but no account has been left us of his speech, or of the chairing.

Hale is elected a member of the House of Commons in Cromwell's second parliament.

When the Parliament met, Hale signed the following test, devised to exclude all those who were disposed to inquire into the validity of the INSTRUMENT OF GOVERNMENT:—

"I do hereby freely promise and engage to be true and faithful to the Lord Protector and the Commonwealth of England, Scotland, and Ireland; and shall not propose or give my consent to alter the government as it is settled in one person and a parliament."

No plans of Chartists, Communists, or Socialists in our day can be more extravagant than those then brought forward with perfect sincerity and intense energy by "men resolved to pull down a standing ministry, the law and property in England, and all the ancient rules of this government, and to set up an indigested enthusiastical scheme, which they called the Kingdom of Christ or of his saints, many of them

He is of use in combating the plans of millenarians and other enthusiasts.

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being really in expectation that one day or another Christ would come down and sit among them; and at least they thought to begin the glorious THOUSAND YEARS mentioned in the Revelation." These Hale, from his biblical learning, and his reputation for piety, combated with much success, seeking to soothe them rather than to treat them with abuse or ridicule. "Among the other extravagant motions made this parliament, one was 'to destroy all the Records in the Tower, and to settle the nation on a new foundation.' So he took this province to himself, to show the madness of this proposition, the injustice of it, and the mischiefs that would follow on it; and did it with such clearness and strength of reason, as not only satisfied all sober persons (for it may be supposed that was soon done), but stopped even the mouths of the frantic people themselves." *

Cromwell was now aiming at the crown, with its ancient prerogatives, which he would have allowed to be subjected to new checks; and most of the eminent lawyers who then flourished were of opinion that it would be for the public good that he should be gratified, as he must afterwards rule according to known law. This opinion, it is pretty clear, was entertained by Hale, notwithstanding all that was afterwards published of his horror of "usurpers." He could not at once move that OLIVER I. should be proclaimed King, but he proposed "that the legislative authority should be affirmed to be in the parliament of the people of England, and a single person qualified with such instructions as that assembly should authorise, in the manner suggested by the republicans. To render this palatable to the executive magistrate, he recommended that the military power (which had been so peremptorily refused to Charles I.) should for the present be unequivocally given to the Protector; and that to avoid the perpetuity of parliament, and other exorbitancies in the claims of supremacy, that officer should be allowed such a co-ordination as might serve for a check in these points." †

Hale supports the authority of Cromwell.

The republican spirit was yet much too strong to allow the title of King to be endured in the House of Commons, — much less in the army; and there appeared a disposition

* Burnet, 15, 16. † Godwin, iv. 118, 119.

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rather to strip Cromwell of the power already conferred upon him, than to enlarge it; — so that when this Parliament had sat little more than three months, and before it had passed a single act, it was abruptly dissolved.

Hale confined himself to the discharge of his official duties during the remainder of Oliver's Protectorate. When a new parliament was called in the following year, he declined being returned as a member of the House of Commons, — perhaps from a hint that the House of Lords was likely to be restored, and that the attendance of the Judges would be required there. In this way he was excluded from the conferences in which the crown was formally tendered to Cromwell. Had he assisted at them, I make no doubt that he would have joined with Lord Commissioner Whitelock and the other great lawyers, who pressed his Highness to accept the offer, that the constitutional monarchy might be re-established under a new dynasty. At this time, profound internal tranquillity prevailed; and the name of England was more respected among foreign nations than it had ever been since the reign of Henry V. Hale was grieved by the ascendancy of the sect of the Independents; but he was comforted by the humiliation of the high-Church party; and as a pious man he must have rejoiced to witness the deep sense of religion which prevailed among all ranks, except a few reckless Cavaliers, whose influence seemed for ever extinguished, although they were ere long to be in possession of the whole power of the state, and their manners were to be copied by the great bulk of the nation.

July, 1656.

April, 1657.

When Oliver had approached so near the old model of government as to have a House of Lords which was to be hereditary, he did not name any Common Law Judges as members of it, but he caused them all to be summoned as assessors in the usual form; and at the opening of the session the only innovation was, that, instead of placing them on the woolsack in the centre of the House, he ranged them, decked in their scarlet robes, on the right hand of the throne, in the seats which had been formerly occupied by the bishops. Here Hale attended, day by day, sometimes being employed to carry messages to the lower House, — till the Protector,

December. Hale attends Cromwell's House of Lords as one of the Judges.

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finding this experiment a failure, dissolved Parliament in as great a fury as ever Stuart had done, and resolved henceforth to rule by his prerogative, or rather by his army. Notwithstanding all the violence of the major-generals, and the arbitrary sentences of the high courts of justice which assembled to punish political offences, Hale steadily adhered to him till his death, expressing no scruples as to the lawfulness of his authority.

Feb. 4. 1658.

Sept. 3. Hale declines to act as a Judge under Richard.

But although Richard was peaceably proclaimed, and addresses, pledging life and fortune in his cause, poured in upon him from all quarters, it was evident to every one that he was unequal to the task which had devolved upon him, and that his government could not stand. According to royal fashion, it was supposed that the commissions of the Judges all expired on the death of the Lord Protector, who had granted them. A new commission was offered to Hale, and he was importuned to accept it — but he answered, "I can act no longer under such authority." His scruples were probably strengthened by observing that the army was much discontented, that several military leaders aspired to the Protectorship, and that plots began to be formed for the restoration of the exiled royal family. He even refused to attend Oliver's funeral, or to wear a suit of mourning sent to him, although the like present was accepted by all others who had been in public employment under the late Protector.

Jan. 27. 1659. He serves as member for the University of Oxford in Richard's Parliament. April 18.

Burnet says that "he lived a private man till the Parliament met that called home the King." But this is not correct; for, although he did not resume his practice at the bar, he was returned to Richard's House of Commons as representative for the University of Oxford, and, having again abjured royal authority, he sat regularly in that assembly till it was dissolved.

As he had never been a member of the Long Parliament, and did not belong to the restored Rump, we know nothing of his proceeding during the troublous period which preceded the meeting of the Convention Parliament. Keeping aloof from the Council of State, and taking no part in the cabals of Wallingford House, the probability is, that he retired

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to Alderley, and that he lived quietly there till the elections were about to take place for the Convention Parliament.

A.D. 1660. Contest whether he should serve for the University of Oxford or for the county of Gloucester in the Convention Parliament.

There was then a contest between the University of Oxford and his native county, — which of them should have the honour of returning him to the House of Commons.

Thus wrote the Vice Chancellor: —

"*For the Honorable Justice Hale, at his house at Alderley, in Gloucestershire. These:*

"Sr, — There hath been and still is a great readiness in this place to choose you for one of their burgesses to sit in the next parliament. But a report (as we suppose, without any just ground) hath been spread abroad here within these few days, that you will not accept of our choice. This hath somewhat discomposed and distracted the minds of some here who are otherwise cordially for you. Wherefore, to settle men's thoughts, and to prevent the inconveniences which may also befal us, 'tis humbly desired that you would be pleased positively to express your willingness, if chosen, to accept thereof. Herein you shall (as things are at present with us) greatly promote the interest of this place, and much quiet and oblige many here who honor you; and among them,

"Your most humble servant,

"John Conant, Vice-Chan.

"Oxford, April 2. 1660."

Hale's answer shows a strong desire to be *seated*, but a considerable apprehension of *falling between two stools*: —

"Sir, — I have received your letter; and, first of all, I must continue my acknowledgments of the great respects of the University to me in thinking me worthy of such a trust as is communicated by your letter. Touching my resolution in general for serving in this ensuing parliament, this is all I can say, the expectation of the success of this parliament is great, and as I think and foresee that the businesses that are like to be transacted therein are like to be of great concernment to this nation, and therefore of great difficulty and intricacy; and therefore I may well think any man (as I am) conscious of his own infirmity may desire in his own particular to be excused; yet, inasmuch as there seem to be no engagements to be prefixt to entangle the conscience or to prevent the liberty of those that are chosen to act according to it, I shall not refuse, if I am freely chosen, to serve in it; although I must deal plainly with you, my own particular engagements do much persuade the contrary. But my difficulty at this present

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rests in this: I have not at all, till this time, heard anything as from the University, touching their resolution; and that is my great strait, that if I shall decline the service of the county in case they fix upon me, I fear I shall be unjust, much disappoint and discontent many; and if I shall decline the choice of the University, I shall seem ungrateful, especially when my last election seems to make me their debtor for ever in the present service; and I know not how to gratify both without a great discourtesy to one in my after relinquishment of either; and the expedient of deferring your choice till the success here were seen, would be too much below that weighty and honourable body of the University, and arrogance in me to expect it, and the choice here falls not before the 18th of this month, which may give too much advantage, it may be, to others' importunities, and leave you too little room after your own choice. The sum is, if I am chosen here, I shall look upon myself as equally concerned for the good of the University as if chosen there. If I am chosen there I shall serve, so it may be, without discontent to my native county. If chosen nowhere, I shall yet endeavour in my private station to serve both; consult the honor and service of the University, and follow that which is most conducible and suitable to it; and assure yourself that whether I am chosen there or here or nowhere, I am

"Yours and the University's most faithful
"Friend and servant,
"M. HALE.

"Perchance, if the election be not before Tuesday, I may, by conference with some, learn more of the sense and resolution of the country here, and send you notice of it to Oxford.

"Alderley, April 6. 1660."

He is elected for the county of Gloucester.

Accordingly, he withdrew his pretensions to be member for the University, and, after a contest which lasted four days, he was again returned for his native county,—being, without solicitation or cost, at the head of the poll; although the *third man*, who was thrown out, "had spent near a thousand pounds to procure voices, — a great sum to be employed that way in those days." *

Hale had not entered into any communication with Monk or with Hyde, of whose abilities and measures he had but a poor opinion; and he thought that the Restoration, which he now sincerely desired, was to be the act of the Almighty,

* Burnet, p. 16.

rather than to be brought about by human means. Thus he wrote, in a paper still extant, entitled "OBSERVATIONS CONCERNING THE PRESENT PROVIDENCES:"—

"There hath been a most visible concurrence of Divine Providence and Wisdom which seems visibly distinct from the very instrumentality of the immediate actors:—1. Infatuating those that were, for their natural parts, not inferior to any that have been, with less wisdom, more successful. 2. Advancing the success of the advices of men of no great eminency of judgment. 3. Carrying the advices and activities of men beyond their own design to the producing of that they intended not, as the setting for Monk to counterwork the designs of Lambert and Vane. 4. In permitting a spirit of jealousy and emulation to arise between men whose common interest lay in the same bottom, whereby they were divided and broken. 5. By mingling casual conjunctures in such order and method, that they were each subservient one to another, and to the common cause of restoring the King; the particulars were infinite and eminent, and such as could not fall under counsel or contrivance."

Yet he remembered the maxim, "Aide toi, le Ciel t'aidera," and he resolved, with Divine assistance, to exert himself to the utmost, that the coming settlement of the nation should be conducted with a respect both for civil and religious liberty. He was of opinion that a favourable opportunity presented itself for regulating the prerogatives of the Crown, which had been so much abused by the Stuart princes; and he was resolved that the promises made to the Presbyterians by Charles in the Declaration from Breda, and by Hyde in his letters to the leaders of that party, should be carried into full effect under the sanction of an act of parliament. Although, in the fervour of his Presbyterian zeal, he had formerly taken the COVENANT, and engaged to extirpate prelacy, he was now rather inclined to that system of church government in a modified form — but he still denied that it existed *jure divino;* and, thinking that it was left by the Divine Founder of the Church to have under him, as its great heavenly head, either one order of Christian ministers, or several, as according to different circumstances might be most for edification, he was anxious to secure the protection of those who adhered to his earlier views, and still thought that

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prelacy and popery were equally obnoxious. In accomplishing this object he anticipated no serious difficulty, for Monk, the Earl of Manchester, and almost all those who were taking an active part in recalling the King, were Presbyterians, and, in the midst of the loyal frenzy which now raged through the land, the majority of those elected members of the House of Commons were Presbyterians. He was confirmed in this

April 25.

notion by observing that, when the Convention Parliament met, the Liturgy of the Church of England was not allowed to be used, the Speaker still reading a litany prepared for the occasion, and lay members joining in extempore prayer.*

The most urgent matter was to consider the conditions on which the King should be recalled. Charles would have been ready to agree to any that might be asked, short of giving up the power of the sword, or the "militia," as it was called, — for which his father had always struggled in his negotiations

May 1.

with the Long Parliament. However, when his letter to the House of Commons was delivered by Sir John Grenville, it excited such a tempest of loyalty that there was a general wish to invite him over without any conditions whatever, and to surrender the rights and liberties of the people into his hands.

Hale's motion in the Convention Parliament that the King should only be restored on conditions.

To the immortal honour of Hale, he was not carried away by this enthusiastic feeling, and he firmly stood up to perform a duty which he believed he owed to the Crown as well as to the community; for he had the sagacity to foresee that the dynasty would be endangered if the ear of the restored Sovereign might be poisoned by the flattery of the high prerogative lawyers, which had proved the ruin of his father.

The Parliamentary History takes no notice of this important debate, — but we have the following sketch of it by Burnet: —

"Hale, afterwards the famous Chief Justice, moved that a committee might be appointed to look into the propositions that had been made, and the concessions that had been offered, by the late King during the war, particularly at the treaty of Newport, that from thence they might digest such propositions as they should think fit to be sent over to the King. This was seconded, but I

* Commons' Journals; 4 Parl. Deb. 141.

do not remember by whom. It was foreseen that such a motion might be set on foot: so Monk was instructed how to answer it, whensoever it should be proposed. He told the House that there was yet, beyond all men's hope, an universal quiet all over the nation; but there were many incendiaries still on the watch, trying where they could first raise the flame. He said he had such copious informations sent him of these things, that it was not fit they should be generally known: he could not answer for the peace either of the nation or of the army, if any delay was put to the sending for the King: what need was there of sending propositions to him? Might they not as well prepare them, and offer them to him when he should come over? He was to bring neither army nor treasure with him, either to fright or to corrupt them. So he moved that they would immediately send commissioners to bring over the King; and said that he must lay the blame of all the blood or mischief that might follow, on the heads of those who should still insist on any motion that might delay the present settlement of the nation. This was echoed with such a shout over the House, that the motion was no more insisted on. To the King's coming in without conditions, may be well imputed all the errors of his reign." *

Hale does not seem to have been afraid of giving offence to the Court by this effort. Conscious of his high qualifications as a Judge, and reflecting on the loyal part he had acted since the death of Oliver, he anticipated that some considerable offer would be made to him. Yet he had not at all set his heart on preferment, and he would have been well pleased to pass the remainder of his days in a private station. Thus he modestly communed with himself, while the King was journeying from Breda: —

May 13. His "Meditation" on his prospect of preferment.

"Though we are but inconsiderable flies that sit upon the chariot wheel, we attribute all the dust that is made to *our* weight and contribution; and thereupon fancy up ourselves into an opinion of our merit, and of a most indisputable attendance of great honour and place and fame attending it; when, it may be, there is no such desert as is supposed; or if there be, yet not such observation of it by others; or if there be, yet the many rivals that attend such a change may disappoint me of it; or if it do not, yet the preferment that befalls me is not such as I expected; or if it be, yet it may be I am not suitable and fit for it; or if I am, yet I

* Own Times, i. 122.

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little consider the trouble and dangers and difficulty that attend it. Possibly it will make me obnoxious to much censure, as if all my former endeavours were basely ordered to my own ends and advantage; or, it may be, it may subject me to the envy and emulation of others, which may in time undermine me; or if there be no such occasion of danger from that ground, yet the state of public affairs has various faces and occasions that may make it necessary to gratify other persons or factions or interests with my removal; or, if it do not, yet the engagement to a place of honor and profit, and the fear of the shame or loss of parting with it, may enslave me to those drudgeries, or, at least, engage me in them that now I look upon as unworthy; or if it do not, yet the very many great difficulties that attend places of honor or profit upon a change, may make my walk in them full of brakes and stones that will perplex and scratch me, if not wholly bemire and entangle me: or if none of all these things befall me, yet great places may rob me of serenity of mind, or withdraw my heart from God by the splendour of the world and multiplicity of secular concernments; or, at least, they most certainly will rob me of my quiet rest, liberty, and the freedom of my opportunities to serve God with entireness and uninterruptedness." *

A contrast by Hale between the Roundheads and Cavaliers.

* The original manuscript of which this is an extract is very long and tedious. However, he gives in it the following lively contrast between the Roundheads and Cavaliers: — "There was in many of the suppressed party much hypocrisy and dissimulation, much violence and oppression: but there was in them sobriety in their conversation, pretence and profession of strictness of life, prayers in their families, observation of the Sabbath. These were commendable in their use, though it may be they were in order to honor and to disguise bad ends and actions. And I pray God it fall not out with us upon our change that the detestation of their persons and foul actions may transport us to a *contrary* practice of that which was in *itself* commendable, lest we grow loose in religion and good duties, and in the observation of the Sabbath; and lest we despise strictness of life because abused by *them* to base and hypocritical ends." This is a wonderful anticipation of the flood of profaneness and immorality which speedily overran the land. It is rather amusing to find Hale already so decidedly considering himself to belong to the royalists, forgetting how lately he had taken the "Covenant," and the "Engagement to the Commonwealth." He continued, by the true Church-and-King men, to be considered all his life little better than a "fanatic and a republican."—See Roger North's writings, wherever Hale's name is mentioned.

CHAPTER XVII.

CONTINUATION OF THE LIFE OF SIR MATTHEW HALE TILL HE RESIGNED THE OFFICE OF CHIEF JUSTICE OF THE KING'S BENCH.

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A. D. 1660. Hale is presented to Charles II.

On the memorable 29th of May, Hale, accompanying Sir Harbottle Grimston, the Speaker, to the Banqueting-House at Whitehall, did obeisance to Charles II., seated on the throne; and had a gracious reception, notwithstanding his motion about "conditions." Three days after, he was again called to the degree of Serjeant-at-law, under a royal writ, his former *coifing* by Cromwell being deemed invalid.* But, although always respectful to the Sovereign, he never displayed the slightest anxiety about Court favour, and he continued to his duty in the House of Commons firmly and consistently.

His opinion upon the 39 Articles.

When the question was debated "whether the Presbyterian Church government, or the Church of England formerly established, should reign?" he expressed respect for the Thirty-nine Articles, but thought they ought not to be put on a footing with the Old and New Testament, and resisted the proposal that subscription to them should be a necessary qualification for holding office in Church or State. †

Being specially appointed by the House to prepare and bring in the Indemnity Bill for political offences during the troubles, he was desirous of confining the exceptions to those who had sat in judgment on the King. In his Diary he had written —

* Dugd. Or. Jur. 115.

† 4 Parl. Hist. 79. This seems to have been a very tumultuous debate. "The Committee sat an hour in the dark before candles were suffered to be brought in, and then they were twice blown out; but the third time they were preserved, though with great disorder."

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"The wise man tells us, 'a man may be *over-just*.' As equity may mitigate the security of justice in particular cases, so may and must prudence some public and universal concernments; otherwise, it may become an act of frenzy, not of justice. I speak not of that unexampled villany against the King's life; wherein, nevertheless, though the punishment must be exemplary, perchance the present necessity may restrain the universality of the punishment, proportionable to the crime in reference to particulars."

Accordingly he exerted himself to save Vane and Lambert, who, in fact, had done little more than himself by acting under the authority of the Commonwealth; and although he was ultimately defeated in this laudable attempt, these two individuals having rendered themselves so very obnoxious to the royalists, he carried the Bill of Indemnity notwithstanding the factious opposition of a considerable number of over-zealous members, who wished, out of revenge, to "smite the fanatics hip and thigh." *

Sept. 12. On the motion for an address to the King, praying that he would marry a Protestant, Hale said "it was not reasonable to confine his Majesty, — urging how much the peace and good of the nation was bound up in him." †

Hale sits as a commissioner on the trial of the Regicides.

Parliament was adjourned to November to make way for the trial of the Regicides before a special commission at the Old Bailey; and this last speech gave such satisfaction, that Hale was named one of the commissioners.‡ He attended regularly, and concurred in the sentences, without becoming the subject of obloquy as Shaftesbury and Monk did, who sat by his side, and were eager for a conviction, although each of them had actually served in the parliamentary army and had levied open war against the late King. Had Hale sat on the trial of Vane, he would have been liable to severe censure — but he never was called judicially to decide the question on which his own legal guilt or innocence depended, viz., "whether a person who obeys a republican government,

* 4 Parl. Hist. 80. 101, 102. 119.

† Ibid. 119. It is remarkable that wherever he is mentioned in this parliament he is called "Serjeant Hales." In his own time an *s* was very often added to his name.

‡ 5 St. Tr. 986.

during the exile of the lawful sovereign, is thereby guilty of high treason?" *

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It was now generally expected that he would be appointed to some high permanent judicial post. He himself — speculating upon the subject, and persuading himself that he wished to avoid promotion, but pretty plainly showing, I think, that he would have been mortified if the offer had not been made to him — wrote in his PRIVATE MEDITATIONS: —

"*Reasons why I desire to be spared from any place of public employment.*

Supposed reasons against his taking the office of a judge in Westminster Hall.

"I. Because the smallness of my estate, the greatness of my charge, and some debts, make me unable to bear it with that decency which becomes it, unless I should ruin myself and family. My estate not above 500*l.* per annum, six children unprovided for, and a debt of 1000*l.* lying upon me. And besides this, of all things it is most unseemly for a judge to be necessitous. Private condition makes that easier to be borne and less to be observed, which a public employment makes poor and ridiculous. And besides this, it will necessarily lift up the minds of my children above their fortunes, which will be my grief and their ruin.

"II. I am not able so well to endure travel and pains as formerly. My present constitution of body requires now some ease and relaxation.

"III. I have formerly served in public employment under a new, odious interest, which by them that understand not, or observe not, or will willingly, upon their own passions and interest, mistake my reasons for it, may be objected even in my very practice of judicature, which is fit to be preserved without the least blemish or disrepute in the person that exerciseth it.

"IV. The present conjuncture and unsettlement of affairs, especially relating to administration of justice, is such; the various interests, animosities, and questions so, many; the present rule so uncertain, and the difficulties so great, that a man cannot, without loss of himself or reputation, or great disobligations, exercise the employment of a judge, whose carriage will be strictly observed, easily misrepresented, and severely censured according to variety of interests. And I have still observed, that almost in all times, especially upon changes, judges have been ever exposed to the calumny and petulancy of every discontented or busy spirit.

* This trial came on in the Court of King's Bench, 2nd June, 1662, when Hale was Chief Baron of the Exchequer. 6 St. Tr. 119.

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"V. I have two infirmities that make me unfit for that employment: — 1st. An aversation to the pomp and grandeur necessarily incident to that employment. 2nd. Too much pity, clemency, and tenderness in cases of life.

"VI. [The MS. is here torn and illegible.]

"VII. I shall lose the weight of my integrity and honesty by accepting a place of honor or profit, as if all my former counsels and appearances were but a design to raise myself.

"VIII. The very engagement in a public employment carries a prejudice to whatsoever shall be said or done to the advantage of that party that raised a man, as if it were the service due to his promotion; and so, though the thing be never so just, it shall carry no weight but a suspicion of design or partiality.

"IX. I am sure, in the condition of a private man declining preferment, my weight will be three to one over what it will be in a place of judicature.

"X. I am able in my present station to serve my King and country, my friend, myself, and family, by my advice and counsel.

"XI. I have of late declined the study of the law, and principally applied myself to other studies, now more easy, grateful, and seasonable to me.*

"XII. I have had the perusal of most of the considerable titles and questions of law that are now on foot in England, or that are likely to grow into controversy within a short time; and it is not fit for me, that am pre-engaged in opinion, to have these cases fall under my judgment as a judge.†

"If it be objected that it will look as a sign of the displeasure of the King against me, or of a disserviceable mind in me towards the King, if I should either be passed over or decline a preferment in this kind, I answer that neither can reasonably be supposed, —

"1. In respect of my present condition as serving in the House of Commons, which excuseth the supposition of either.

"2. His Majesty's good opinion of my fidelity may be easily manifested, and my fidelity and service to him will be sufficiently testified by my carriage and professions.

* It was barely two years since he had ceased to be a Judge.

† This scruple I do not at all understand, for he had not returned to private practice since the death of Oliver, and it was above seven years since he left the bar. In the early part of his career he had practised very extensively as a conveyancer, particularly in framing settlements for noble families.—Roger North's Life of Lord Keeper Guilford, i. 132.

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"But if, after all this, there must be a necessity of undertaking an employment, I desire, —

"1. It may be in such a court and way as may be most suitable to my course of studies and education.

"2. That it may be the lowest place that may be, that I may avoid envy. One of his Majesty's counsel in ordinary, or, at most, the place of a puisne judge in the Common Pleas, would suit me best."

It is doubtful whether, notwithstanding his great judicial reputation, he might not have been allowed to remain a member of the House of Commons, if it had not just then turned out to be exceedingly convenient to the Government to remove him from that assembly.

Occasion of his being made Chief Baron of the Exchequer.

Lord Clarendon, after all his fair promises to the Presbyterians, had resolved that the Church of England should be restored to the ascendency it had enjoyed under Archbishop Laud; but, as yet, the bishops were excluded from sitting in the House of Lords, by the act to which Charles I. had duly given his assent before the commencement of the civil war; and it was essentially necessary to humour the Presbyterians, who could still command a majority in the Lower House. For this reason, Baxter, Calamy, and other divines of that persuasion, had been appointed King's chaplains, and Charles had declared in favour of a mitigated episcopacy *,—all tests being removed which could not be taken by the more rigid Presbyterians, and a comprehensive church establishment being arranged which would equally include Presbyterians and Episcopalians. To consummate this happy union, it was proposed that a Synod should be called, composed equally of the two denominations of Christians. The Presbyterians thought they discovered that the Chancellor, intending to practise a pious fraud upon them, merely wished to amuse them till the Convention Parliament should be dissolved; expecting that, from the growing dislike to whatever savoured of Puritanism, after a general election they would be at his mercy. They therefore insisted that their rights should be

* This was pretty much Archbishop Usher's plan, according to which, although not exactly "Princeps inter Pares," the bishop was not to act without the advice of his presbyters; he was to preach every Sunday; and, eschewing secular ambition, he was to devote himself to his spiritual duties.—4 Parl. Hist. 152.

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secured by a bill to be passed by the present parliament, and they carried a motion in the House of Commons that "Serjeant Hale (in whom they placed entire confidence) should prepare and bring in the same." Accordingly, acting with his usual good faith, he laid on the table of the House a bill which embodied the Articles on this subject contained in the Declaration from Breda. Had he remained a member of the House, there can be little doubt that by his exertions it would have passed the House of Commons, — so that it must have been defeated by a vote of the House of Lords, or by the veto of the Crown. In either of these cases, not only would there have been a clamour about broken faith, but the public tranquillity would have been endangered, and the King might again have "gone upon his travels."

Fortunately, at this time the office of Chief Baron of the Court of Exchequer was vacant, by the promotion of Sir Orlando Bridgman to be Chief Justice of the Court of Common Pleas. Clarendon proposed, and the King readily consented that the author of the "Comprehension Bill" should be the new Chief Baron; — for the old doctrine was now clearly recognised and acted upon, that the Common Law Judges, who acted as assessors to the House of Lords, were disqualified to sit in the House of Commons.

Nov. 7. Compliment to him by Clarendon when he was sworn in.

After a little decent resistance, Hale accepted the honour thrust upon him. At his inauguration, of course not a word was said about the "Comprehension Bill;" but the Chancellor expressed his respect for the author of it in a very singular manner, telling him, among other things, "That if the King could have found out an honester and fitter man for the employment of presiding in the Court of Exchequer, he would not have advanced him to it; and that he had, therefore, preferred him because he knew none that deserved it so well." *

Nov. 27.

This manœuvre succeeded. The second reading of the "Comprehension Bill" came on a few days after, when, in Hale's absence, it was furiously pulled to pieces by Morrice, the Secretary of State, a creature of Clarendon, and was

* Burnet, 17; Kennet Reg. 280; Oldmixon, 488; Neal, ii. 78. 80.

rejected by a majority of 183 to 157.* A dissolution soon after took place, and in the next parliament Clarendon was able, without difficulty, not only to restore the bishops to the House of Lords, but to eject 2000 Presbyterian ministers from livings in the Church of which they were in possession, and to pass the "Act against Occasional Conformity" and the "Five Mile Act," by which the Presbyterians were entirely expelled from the House of Commons, and were subjected to the most grievous persecution.

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His reluctance to be knighted.

Hale, on his promotion, incurred some ridicule by attaching importance to the harmless ceremony of being knighted, instead of quietly submitting to it. From an excess of humility, he desired to avoid what was then considered a distinction, "and therefore, for a considerable time, declined all opportunities of waiting on the King, — which the Lord Chancellor observing, sent for him upon business one day when the King was at his house, and told his Majesty 'there was his modest Chief Baron;' — upon which he was unexpectedly knighted."† It must have been a rich treat for the merry monarch to dub the semi-puritanical sage, saying, "RISE, SIR MATTHEW."

Admirable rules laid down by him for his conduct as a Judge.

A smile at such little infirmities does not prevent us from viewing with admiration and reverence the rules which he now laid down for his conduct as a Judge. They ought to be inscribed in letters of gold on the walls of Westminster Hall, as a lesson to those intrusted with the administration of justice.

"*Things necessary to be continually had in remembrance.*

"1. That in the administration of justice I am intrusted for God, the King, and country; and therefore,

"2. That it be done, 1. uprightly; 2. deliberately; 3. resolutely.

"3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.

"4. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.

"5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions.‡

* 4 Parl. Hist. 154. † Burnet, 17.

‡ "And, while on the bench, not writing letters or reading newspapers."

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"6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.

"7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.

"8. That in business capital, though my nature prompt me to pity, yet to consider there is a pity also due to the country.

"9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.

"10. That I be not biassed with compassion to the poor, or favour to the rich, in point of justice.

"11. That popular or court applause or distaste have no influence in any thing I do, in point of distribution of justice.

"12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice.

"13. If in criminals it be a measuring cast, to incline to mercy and acquittal.

"14. In criminals that consist merely in words, where no more harm ensues, moderation is no injustice.

"15. In criminals of blood, if the fact be evident, severity is justice.

"16. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending.

"17. To charge my servants, 1. Not to interpose in any matter whatsoever; 2. Not to take more than their known fees; 3. Not to give any undue precedence to causes; 4. Not to recommend counsel.

"18. To be short and sparing at meals, that I may be the fitter for business." *

I have known laudable resolutions formed by new judges very speedily forgotten; and it is a curious fact in the annals of our profession, that those men who, when at the bar, complained most bitterly of judicial impatience and loquacity, becoming judges themselves, have been most noted for being impatient and loquacious. But Hale strictly and uniformly observed all the rules he laid down for himself, and might be considered the perfect model of a great magistrate.

He continued Lord Chief Baron of the Exchequer for eleven years, and he is certainly to be considered the most

* From the original in Hale's own handwriting. I could only wish that, further, he had given a caution against interrupting counsel, and against loquacity on the bench, with a repetition of Lord Bacon's maxim, "A much-speaking judge is a no well-tuned cymbal."

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eminent Judge who ever filled this office. Being then promoted to be Chief Justice of England, he gave new dignity to the supreme magistracy, which had been illustrated by Gascoigne, by Fortescue, and by Coke.

He is made Chief Justice of the King's Bench. A.D. 1671.

That we may take a view of the whole of his judicial career, it may be convenient here to mention that in the year 1671, on the death of Lord Chief Justice Kelynge, although the wicked CABAL was then in full sway, — as his place could not conveniently be sold, or given to a profligate courtier, Lord Keeper Bridgman was allowed to have the disposal of it, and he recommended the man whom the whole nation would have preferred. "All people applauded this choice, and thought their liberties could not be better deposited than in the hands of one that as he understood them well, so he had all the justice and courage that so sacred a trust required." *

His qualifications as a Judge.

There was no disappointment; and while Hale sat in the Court of Common Pleas, in the Court of Exchequer, or in the Court of King's Bench, his qualifications as a Judge always shone with lustre in proportion as the occasion called forth their display. He was equally familiar with every branch of English jurisprudence, — the criminal code and the civil code, — the law of real property and the law of personal property, — antiquarian lore and modern practice. He likewise had the advantage, so rare in England, of having studied the Institutes, Pandects, and Code of Justinian, with the best commentaries on those immortal compilations. While free from every other passion, he was constantly actuated by a passion to do justice to all suitors who came before him. He was not only above the suspicion of corruption or undue influence, but he was never led astray by ill-temper, impatience, haste, or a desire to excite admiration. Instead of submitting to the dictation of the leader of the bar, —

"One thing was much observed and commended in him, that when there was a great inequality in the ability and learning of the counsellors that were to plead one against another, he thought it became him as the Judge to supply that; so he would enforce

* Burnet, p. 9.

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what the weaker counsel managed but indifferently, and not suffer the more learned to carry the business by the advantage they had over the others in their quickness and skill in law, and readiness in pleading, till all things were cleared in which the merits and strength of the ill-defended cause lay. He was not satisfied barely to give his judgment in causes, but did, especially in intricate ones, give such an account of the reasons that prevailed with him, that the counsel did not only acquiesce in his authority, but were so convinced by his reasons, that many professed that he brought them often to change their opinions; so that his giving of judgment was really a learned lecture upon that point of law. And, which was yet more, the parties themselves, though interest does too often corrupt the judgment, were generally satisfied with the justice of his decisions, even when they were made against them. His impartial justice and great diligence drew the chief practice after him into whatsoever court he came; so as he had drawn the business much after him into the Common Pleas and the Exchequer, it now followed him into the King's Bench, and many causes that were depending in the Exchequer and not determined were let fall there, and brought again before him in the court to which he was now removed." *

Notwithstanding his great superiority to his brethren on the bench, he never attempted to dictate to them; and, on the contrary, he went into the extreme of not sufficiently guiding them to a just conclusion:—

"He would never suffer his opinion in any case to be known till he was obliged to declare it judicially, and he concealed his opinion in great cases so carefully that the rest of the judges in the same court could never perceive it. His reason was, because every judge ought to give sentence according to his own persuasion and conscience, and not to be swayed by any respect or deference to another man's opinion; and by this means it happened sometimes that when all the Barons of the Exchequer had delivered their opinions, and agreed in their reasons and arguments, yet he, coming to speak last, and differing in judgment from them, expressed himself with so much weight and solidity, that the Barons have immediately retracted their votes and concurred with him." †

"The only complaint that was ever made of him was *that he did not dispatch matters quick enough*; but the great care he used to put suits to a final end, as it made him slower in deciding

* Burnet, p. 29, 30.

† Ibid. p. 54. It would surely have been better if all their Lordships had had a *caucus*.

them, so it had this good effect, that causes tried before him were seldom if ever tried again." *

"He did not affect the reputation of quickness and dispatch by a hasty and captious hearing of the counsel. He would bear with the meanest, and gave every man his full scope, thinking it much better to lose time than patience. In summing up evidence to a jury, he would always require the bar to interrupt him if he did mistake, and to put him in mind of it if he did forget the least circumstance: some judges have been disturbed at this as a rudeness, which he always looked upon as a service and respect done to him." †

But he remembered that it is the duty of a judge to render it disagreeable to an advocate to utter nonsense, or what is wholly irrelevant,—

"He therefore held those who pleaded before him to the main hinge of the business, and cut them short when they made excursions about circumstances of no moment, — by which he saved much time, and made the chief difficulties be well stated and cleared." ‡

As he had no favourites among counsel, he studied to be free from antipathies; but, from his love of morality and fair practice, he was supposed to bear rather hard on the licentious and crafty, though good-humoured, Saunders, afterwards his successor as Chief Justice of the King's Bench §; and he caused heavy complaints by refusing to discharge the infamous Serjeant Scroggs when arrested for debt at the gate of Westminster Hall ‖, although Sir George Jeffreys, by flattery and the affectation of religion, is said to have gained some authority over him.¶

He was not merely by far the best Common Law Judge, but by far the best Equity Judge of his time. Never having been Chancellor or Master of the Rolls, he was the first English lawyer who took a just view of this branch of our jurisprudence, controverting the common notion that it was

He is a great Equity Judge.

* Burnet, p. 18.

† Burnet, p. 56. I have heard of judges who were rather faulty in this respect, and, for being set right, would revenge themselves by an observation upon the effect of the evidence unfavourable to the counsel who had the temerity to interpose.

‡ Burnet, p. 40. § Roger North's Life of Lord Guilford, ii. 127.

‖ Woolrych's Life of Jeffreys, p. 52.

¶ North's Life of Lord Guilford, i. 118.

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regulated by no more certain rule than a capricious idea of what was fit in each particular case.

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"He did look upon Equity as part of the Common Law, and one of the grounds of it; and therefore, as near as he could, he did always reduce it to certain rules and principles, that men might study it as a science, and not think the administration of it had any thing arbitrary in it."* He therefore not only disposed admirably of the business on the Equity side of the Court of Exchequer, but he was frequently called into the Court of Chancery as assessor by Lord Chancellor Clarendon and Lord Keeper Bridgman. Even Lord Shaftesbury, when he fantastically grasped the great seal, was soon obliged to rely upon the aid of Sir Matthew Hale, although at first he presumptuously trusted to his own cleverness, setting all established doctrines at defiance. Lord Nottingham, the father of Equity, worshipped Hale as his great master.

A.D. 1666. His merit in settling disputes after the Fire of London.

Sir Matthew likewise gained immense credit, after the Fire of London, by sitting many months in Clifford's Inn, and, with the assistance of some other judges, deciding all questions that arose about title and boundary, and the obligation to rebuild. The restoration of the city, reckoned one of the wonders of the age, was mainly ascribed to his care, "since there might otherwise have followed such an endless train of vexatious suits, as might have been little less chargeable than the fire itself had been."† His readiness in arithmetic, and his skill in architecture, are said to have then been of signal use to him. For his services on this occasion, the portrait of him was placed in Guildhall, where we now behold it — and he received from the Lord Mayor, as his only further recompence, a silver snuff-box, which is still in the possession of his family.

Anecdotes of Hale's judicial purity.

Although the offer of *epices* by suitors to the judge was not then recognised, the custom of *soliciting* him to do justice

* Burnet, p. 55.

† Ibid. p. 18. Of his architectural taste we may judge from his advising the Duke of Beaufort, when building the magnificent chateau at Badmington, to have only one door to it, which should be commanded by a window in his grace's study, so that no one could enter or leave the dwelling clandestinely.—R. North's Life of Guilford, i. 260.

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was not quite obsolete. A noble Duke once called on Lord Chief Baron Hale, under pretence of giving him information which would better enable him to understand a cause shortly to be tried before him. The Lord Chief Baron, interrupting him, said "Your Grace does not deal fairly to come to my chamber about such an affair, for I never receive any information of causes but in open court, where both parties are to be heard alike." The Duke withdrew, and was silly enough to go straightway to the King, and to complain of this as a rudeness not to be endured. His Majesty answered, "Your Grace may well content yourself that it is no worse; and I verily believe he would have used myself no better, if I had gone to solicit him in any of my own causes."*

However, it must be confessed that Hale carried his hatred of bribery and corruption to a coxcombical length, which exposed him to ridicule. When he bought any articles after he became a Judge, he not only would not try to beat down the price, but he insisted on giving more than the vendors demanded, lest, if they should afterwards have suits before him, they should expect favour because they had dealt handsomely by him. A gentleman in the West of England, who had a deer-park, was in the habit of sending a buck as a present to the Judges of Assize, and did the same when Lord Chief Baron Hale came the circuit, although a cause in which he was plaintiff was coming on for trial. The cause being called, the following extraordinary dialogue took place in open court: —

Lord C. Baron: "Is this plaintiff the gentleman of the same name who hath sent me venison?" *Judge's Servant:* "Yes, please you, my Lord." *Lord C. B.:* "Stop a bit, then. Do not yet swear the jury. I cannot allow the trial to go on till I have paid him for his buck." *Plaintiff:* "I would have your Lordship to know, that neither myself nor my forefathers have ever sold venison, and I have done nothing to your Lordship which we have not done to every judge that has come this circuit for centuries bygone." *Magistrate of the County:* "My Lord, I can confirm what the gentleman says for truth, for twenty years back." *Other Magistrates:* "And we, my Lord, know the same." *Lord C. B.:*

* Burnet, p. 20.

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"That is nothing to me. The Holy Scriptures say, 'a gift perverteth the ways of judgment;' I will not suffer the trial to go on till the venison is paid for. Let my butler count down the full value thereof." *Plaintiff:* "I will not disgrace myself and my ancestors by becoming a venison-butcher. From the needless dread of *selling* justice, your Lordship *delays* it. I withdraw my record."

So the trial was postponed till the next assizes, at the costs of the man who merely wished to show a usual civility to the representative of the Sovereign.

According to a custom which prevailed, "from time whereof the memory of man runneth not to the contrary," the Dean and Chapter of Salisbury had presented to the Judges of Assize six sugar loaves. Lord Chief Baron Hale, when upon the Western Circuit, having received the usual donation, discovered that the Dean and Chapter had a cause coming on before him for trial, and he sent his servant to pay for the sugar loaves before he would allow it to be entered. Those venerable litigants, instead of firing up at the notion of their becoming "grocers," or taunting the Judge, as they might have done, with making them violate the statute of Henry VIII. against "clerical trading," received the money, tried their cause, and obtained a verdict.

Attempt to corrupt him.

On another occasion, there really was a paltry attempt to corrupt him, which he very properly exposed. During the assizes at Aylesbury, one Sir John Croke, who was unjustly prosecuting a respectable clergyman as a robber, for merely entering his house to demand tithes, in the foolish hope of conciliating the Judge, sent to his lodgings two loaves of sugar, which were immediately returned. When the prosecution had blown up, and the prisoner had been acquitted, the Lord Chief Baron called for the prosecutor, but was told that he had made off: —

Lord C. Baron: "Is Sir John Croke gone? Gentlemen, I must not forget to acquaint you, for I thought that Sir John Croke had been here still, that this Sir John Croke sent me, this morning, two sugar loaves for a present. I did not then know so well as now, what he meant by them; but, to save his credit, I sent his sugar loaves back again. Mr. Clerk of Assize, did you not send Sir John his sugar loaves back again?" *Clerk of Assize:*

"Yes, my Lord, they were sent back again." *Lord C. Baron:* "I cannot think that Sir John believes that the King's Justices come into the country to take bribes. I rather think that some other person, having a design to put a trick upon him, sent them in his name. Gentlemen, do you know this hand?" (showing to the gentlemen of the grand jury the letter which accompanied the sugar.) *Foreman:* "I fear me it is Sir John's, for I have often seen him write, doing justice business along with him; and your Lordship may see that it is the same with this *mittimus* written and signed by him." *Lord C. B.* (putting the letter back into his bosom): "I intend to carry it with me to London, and I will relate the foulness of the business, as I find occasions." *

Roger North's censure of Hale.

Hale is severely criticised as a Judge, though not altogether candidly, by Roger North, the brother and biographer of Lord Keeper Guilford. The Norths, too, had been bred up among the Puritans, but they went over to the ultra high-Church party, and regarded all who did not go the same length with themselves as schismatics and republicans. Hale had softened them a little by taking kindly notice of Mr. Francis, when a very young barrister on the Northern Circuit.† But when Sir Francis was advanced to be a member of the House of Commons, to be Attorney General, and to be Chief Justice of the Common Pleas, and when he persecuted the Dissenters, he looked with envy and enmity at his former patron, whose conduct and reputation formed such a contrast with his own. Before he became Lord Chancellor and a peer, Hale had been taken to a quieter world; yet the Norths continued to bear him a grudge, and to carp

* "The Perjured Phanatic," an account of the trial, 2d edition, 1710. The late Baron Graham related to me the following anecdote to show that he had more firmness than Judge Hale. "There was a baronet of ancient family with whom the Judges going the Western Circuit had always been accustomed to dine. When I went that circuit, I heard that a cause in which he was plaintiff was coming on for trial; but the usual invitation was received, and, lest the people might suppose that Judges could be influenced by a dinner, I accepted it. The defendant, a neighbouring squire, being dreadfully alarmed by this intelligence, said to himself, 'Well, if Sir John entertains the Judge hospitably, I do not see why I should not do the same by the Jury.' So he invited to dinner the whole of the special jury summoned to try the cause. Thereupon the baronet's courage failed him, and he withdrew the record, so that the cause was not tried; and, although I had my dinner, I escaped all suspicion of partiality."

† When the little gentleman was once struggling through a crowd in court, Hale said from the bench, "Make way for the little gentleman there, for he will soon make way for himself."—*Life of Guilford.*

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at his decisions, his principles, and his manners. With true fraternal sympathy, thus writes Roger: —

"The truth is, his Lordship [Lord Guilford] took early into a course diametrically opposite to that approved by Hale; for the principles of the latter, being demagogical, could not allow much favour to one who rose a monarchist declared. He was an upright judge if taken within himself; and when he appeared, as he often did, and really was, partial, his inclination or prejudice, insensibly to himself, drew his judgment aside. His bias lay strangely for and against characters and denominations, and sometimes the very habits of persons. If one party was courtier and well-dressed, and the other a sort of puritan with a black cap and plain clothes, he insensibly thought the justice of the cause with the latter. If the dissenting or anti-court party was at the back of a cause, he was very seldom impartial; and the loyalists had always a great disadvantage before him. And he ever sat hard on his Lordship in his practice in causes of that nature. It is said he was once caught. A courtier who had a cause to be tried before him, got one to go to him as from the King, to speak for favour to his adversary, and so carried his point; for the Chief Justice could not think any person to be in the right that came so unduly recommended. . . . He would put on the show of much valour, as if danger seemed to lie on the side of the Court, from whence either loss of his place (of which he really made no great account), or some more violent, or, as they pretended, arbitrary infliction might fall upon him. Whereas, in truth, that side was safe, which he must needs know, and that all real danger to a judge was from the imperious fury of a rabble, who have as little sense and discretion as justice, and from the House of Commons, who seldom want their wills, and, for the most part, with the power of the Crown, obtain them. Against these powers he was very fearful; and one bred, as he was, in the rebellious times, when the government at best was but rout and riot, either of rabble committees or soldiers, may be allowed to have an idea of their tyranny, and, consequently, stand in fear of such brutish violence and injustice as they committed. But it is pleasant to consider that this man's not fearing the Court was accounted valour; that is, by the populace, who never accounted his fear of themselves to have been a mere timidity." Yet the honest biographer is obliged to add, "He became the cushion exceedingly well; his manner of hearing patient, his directions pertinent, and his discourses copious, and, although he hesitated, often fluent. His stop for a word, by the

produce, always paid for the delay; and on some occasions, he would utter sentences heroic. One of the bankers, a courtier, by name Sir Robert Viner, when he was Lord Mayor of London, delayed making a return to a *mandamus*, and the prosecutor moved for an attachment against him. The recorder, Howel, appeared, and, to avert the rule for an attachment, alleged the greatness of his magistracy, and the disorder that might happen to the City if the Mayor were imprisoned. The Chief Justice put his thumbs in his girdle, as his way was, and 'Tell me of the Mayor of London!' said he, 'tell me of the Mayor of Queenborough!' . . . His Lordship knew him perfectly well, and revered him for his great learning in the history, law, and records of the English constitution. I have heard him say that while Hale was Chief Baron of the Exchequer, by means of his great learning, even against his inclination, he did the Crown more justice in that court than any others in his place had done, with all their goodwill and less knowledge. His foible was yielding towards the popular; yet, when he knew the law was for the King (as well he might, being acquainted with all the records of the Court, to which men of the law are commonly strangers), he failed not to judge accordingly.* — I have known the Court of King's Bench sitting every day from eight to twelve, and the Lord Chief Justice Hale managing matters of law to all imaginable advantage to the students, and in which he took a pleasure, or rather pride. He encouraged inquiry when it was to the purpose, and used to debate with the counsel, so as the court might have been taken for an academy of sciences, as well as the seat of justice."†

Hale's opinion of the validity of Quakers' marriages.

The most striking proof of Hale's impartiality, between persons of opposite political parties, and opposite religious persuasions, will be found in a list of cases made out by the Norths, in which he is alleged to have been misled by his prejudices. In all of them, except one, it will be found that he lays down the law correctly. Upon the question involved in that one, after it had been doubted for near two centuries, the House of Lords, a few years ago, were equally divided, and it was decided against Hale's opinion only on the technical rule *semper prosumitur pro negante*. The charge was, that he had heretically countenanced Quakers' marriages, by

* Roger North's Life of Lord Guilford, i. 111—115.
† Study of the Laws, p. 32.

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allowing a special verdict to be taken to try their validity. "This," says Roger North, "was gross in favour of those worst of sectaries; for if the circumstances of a Quaker's marriage were stated in evidence, there was no colour for a special verdict; for how was a marriage by a layman, without the liturgy, good? But here, though the right was debated, and could not be determined for the Quakers, yet a special verdict upon *no point* served to baffle the party who would take advantage of the nullity." * The truth was, as we know from Bishop Burnet, that a Quaker was sued before Chief Baron Hale for debts owing by the wife, a Quakeress, *dum sola*, after they had long lived together as man and wife, and had a numerous family; and the defendant's counsel contended that there was no marriage between them, since it was not celebrated by a priest in orders, according to the rites of the Church of England. The Judge said he was not willing, by a *nisi prius* decision, to bastardise the children, and directed the jury to find a special verdict, saying "he thought it reasonable, and consistent with natural right and the precepts of the Gospel, that all marriages made according to the several religious persuasions of the parties ought to be valid in law." † Whether his opinion, therefore, was right or wrong, the accusation that he on this occasion showed any undue partiality to Dissenters is wholly unfounded.

The Case of John Bunyan, author of the Pilgrim's Progress, before Hale.

His demeanour in the case of John Bunyan, the author of THE PILGRIM'S PROGRESS, shows him paying respect both to the rules of law and to the dictates of humanity. This wonderful man, — who, though bred a tinker, showed a genius little inferior to that of Dante, — having been illegally convicted by the court of quarter sessions, was lying in prison under his sentence, in the gaol of Bedford. Soon after the restoration of Charles II., the young enthusiast had been

* Life of Guilford, i. 126.

† Burnet, p. 44. I am glad to think that this is the common law of Scotland, and is now the statute law of England; but in countries governed by the common law of England on this subject the greatest confusion now prevails, by Hale's doctrine having been overruled. The special verdict was never argued, and the law remained uncertain till the reign of Queen Victoria. In the session of 1847 I introduced and passed a bill to declare valid Quaker marriages which had been contracted prior to the General Dissenters' Marriage Act of 1837, which was only prospective. See 11 & 12 Vic. c. 58.

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arrested while he was preaching at a meeting in a private house, and, refusing to enter into an engagement that he would preach no more, had been indicted as "a person who devilishly and perniciously abstained from coming to church to hear divine service, and a common upholder of unlawful meetings and conventicles, to the great disturbance and distraction of the good subjects of this realm." At his arraignment, he said, "Show me the place in the Epistles where the Common Prayer Book is written, or one text of Scripture that commands me to read it, and I will use it. But yet, notwithstanding, they that have a mind to use it, they have their liberty; that is, I would not keep them from it. But, for our own parts, we can pray to God without it. Blessed be His name." The Justices considered this tantamount to a plea of *guilty*, and, without referring his case to the jury, the chairman pronounced the following judgment: "You must be had back to prison, and there lie for three months following; and at three months' end, if you do not submit to go to church to hear divine service, and leave your preaching, you must be banished the realm. And if, after such a day as shall be appointed you to be gone, you shall be found in this realm, or be found to come over again without special license from the King, you must stretch by the neck for it; I tell you plainly."

Arbitrary as the laws then were, there was no clause in any statute that would support this sentence; yet Bunyan was imprisoned under it, as he refused to give surety that he would abstain from preaching. Elizabeth, his wife, actuated by his undaunted spirit, applied to the House of Lords for his release; and, according to her relation *, she was told "they could do nothing; but that his releasement was committed to the Judges at the next assizes." The Judges were Sir Matthew Hale and Mr. Justice Twisden; and a remarkable contrast appeared between the well-known *meekness* of the one, and *fury* of the other. † Elizabeth came before them, and, stating her husband's case, prayed for justice: —

July, 1661.

* A Relation of the Imprisonment, &c., ed. 1765, p. 44.

† The contemporary reporters, in recording Twisden's judgments, begin "Twisden, *in furore*, observed," &c.

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"Judge Twisden," says John Bunyan, "snapt her up, and angrily told her that I was a convicted person, and could not be released unless I would promise to preach no more."* *Elizabeth:* "The Lords told me that releasement was committed to you, and you give me neither releasement nor relief. My husband is unlawfully in prison, and you are bound to discharge him." *Twisden:* "He has been lawfully convicted." *Elizabeth:* "It is false, for when they said 'Do you confess the indictment?' he answered, 'At the meetings where he preached, they had God's presence among them.'" *Twisden:* "Will your husband leave preaching? if he will do so, then send for him." *Elizabeth:* "My Lord, he dares not leave off preaching as long as he can speak. But, good my Lords, consider that we have four small children, one of them blind, and that they have nothing to live upon, while their father is in prison, but the charity of Christian people. I myself *smayed* at the news when my husband was apprehended, and, being but young, and unaccustomed to such things, fell in labour; and, continuing in it for eight days, was delivered of a dead child." *Sir Matthew Hale:* "Alas, poor woman!" *Twisden:* "Poverty is your cloak, for I hear your husband is better maintained by running up and down a-preaching than by following his calling." *Sir Matthew Hale:* "What is his calling?" *Elizabeth:* "A tinker, please you, my Lord; and because he is a tinker, and a poor man, therefore he is despised, and cannot have justice." *Sir Matthew Hale:* "I am truly sorry we can do you no good. Sitting here, we can only act as the law gives us warrant; and we have no power to reverse the sentence, although it may be erroneous. What your husband said was taken for a confession, and he stands convicted. There is, therefore, no course for you but to apply to the King for a pardon, or to sue out a writ of error; and, the indictment, or subsequent proceedings, being shown to be contrary to law, the sentence shall be reversed, and your husband shall be set at liberty. I am truly sorry for your pitiable case. I wish I could serve you, but I fear I can do you no good."

Bunyan as yet was not distinguished from the great crowd of enthusiasts who were then desirous of rivalling the heroes of Fox's Martyrology, — their favourite manual. Hale, making inquiries about him, was told that he was "a hot-spirited fellow," and actually found that there would be no use in supplying the means of prosecuting a writ of error,

* A Relation, &c., p. 41.

as, if set at liberty, he would soon get into worse durance, for at Bedford he was very kindly treated by a humane gaoler, and his family were cared for by the Puritans of the town and neighbourhood. When the Judges were trumpeted out of Bedford, leaving the tinker still in prison, he was very wroth; and Elizabeth burst into tears, saying, "Not so much because they are so hard-hearted against me and my husband, but to think what a sad account such poor creatures will have to give at the coming of the Lord."

Little do we know what is for our permanent good. Had Bunyan then been discharged and allowed to enjoy liberty, he no doubt would have returned to his trade, filling up his intervals of leisure with field-preaching; his name would not have survived his own generation, and he could have done little for the religious improvement of mankind. The prison-doors were shut upon him for twelve years. Being cut off from the external world, he communed with his own soul; and, inspired by Him who touched Elijah's hallowed lips with fire, he composed the noblest of allegories, the merit of which was first discovered by the lowly, but which is now lauded by the most refined critics; and which has done more to awaken piety, and to enforce the precepts of Christian morality, than all the sermons that have been published by all the prelates of the Anglican Church.*

Trial of the witches at Bury St. Edmund's. A.D. 1665.

I wish to God that I could as successfully defend the conduct of Sir Matthew Hale in a case to which I most reluctantly refer, but which I dare not, like Bishop Burnet, pass over unnoticed, — I mean the famous trial before him, at Bury St. Edmund's, for witchcraft. I fostered a hope that I should have been able, by strict inquiry, to contradict or mitigate the hallucination under which he is generally supposed to have then laboured, and which has clouded his fame, — even in some degree impairing the usefulness of that bright example of Christian piety which he left for the edification of mankind. But I am much concerned to say, that a careful perusal of the proceedings and of the evidence shows that upon this occasion he was not only under the influence of the most vulgar credulity, but that he violated the plainest

* See Southey's Life of John Bunyan.

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rules of justice, and that he really was the murderer of two innocent women. I would very readily have pardoned him for an undoubting belief in witchcraft, and I should have considered that this belief detracted little from his character for discernment and humanity. The Holy Scriptures teach us that, in some ages of the world, wicked persons, by the agency of evil spirits, were permitted, through means which exceed the ordinary powers of nature, to work mischief to their fellow-creatures. These arts, which were said to have been much practised in popish times, were supposed to have become still more common at the Reformation. Accordingly, the statute 33 Hen. VIII. c. 8. made all witchcraft and sorcery *felony without benefit of clergy*, and by 1 Jac. I. c. 12. (passed when Lord Bacon was a member of the House of Commons) the capital punishment was extended to "all persons invoking an evil spirit, or consulting, covenanting with, entertaining, employing, *feeding*, or rewarding any evil spirit, or taking up dead bodies from their graves to be used in any witchcraft, sorcery, charm, or enchantment." There had been several prosecutions on these statutes in the reigns of James I. and Charles I., — when convictions had taken place on the confession of the accused; — in the trial of the murderers of Sir Thomas Overbury it had appeared that Mrs. Turner was believed to be a witch, not only by the Countess of Essex, but by the King and all his Court; — and although magic and the black art had lately lost much credit, yet, in the reign of Charles II., a judge who from the bench should have expressed a disbelief in them would have been thought to show little respect for human laws, and to be nothing better than an atheist. Had the miserable wretches, indicted for witchcraft before Sir Matthew Hale, pleaded *guilty*, or specifically confessed the acts of supernatural agency imputed to them, or if there had been witnesses who had given evidence, however improbable it might be, to substantiate the offence, I should hardly have regarded the Judge with less reverence because he pronounced sentence of death upon the unhappy victims of superstition, and sent them to the stake or the gibbet. But they resolutely persisted in asserting their innocence, and there not only was no evidence against

them which ought to have weighed in the mind of any reasonable man who believed in witchcraft, but during the trial the imposture practised by the prosecutors was detected and exposed.

Evidence upon which the conviction took place.

The reader may like to have a sketch of this last capital conviction in England for the crime of *bewitching*. Indictments were preferred jointly against Amy Duny and Rose Cullender, two wrinkled old women, for laying spells upon several children, and in particular William Durent, Elizabeth Pacy, and Deborah Pacy. The trial began with proof that witnesses, who were to have given material evidence, as soon as they came into the presence of the clerk of assize, were seized with dumbness, or were only able to utter inarticulate sounds. A strong corroboration of the guilt of the prisoners was stated to be, that these witnesses remained in the same cataleptic state till the verdict was pronounced, and were thereupon instantly cured. The bewitching of William Durent rested on the testimony of Dorothy, his mother, who said,—

"About seven years ago, having a special occasion to go from home, I desired Amy Duny, my neighbour, to look to my boy Billy, then sucking, during my absence, promising her a penny for her pains; I desired her not to suckle my child; I very well knew that she was an old woman, and could not naturally give suck, but, for some years before, she had gone under the reputation of a witch; nevertheless, she did give suck to the child, and that very night he fell into strange fits of swounding, and was held in a terrible manner, insomuch that I was terribly frightened therewith, and so continued for divers weeks. I then went to a certain person named Dr. Jacob, who lived at Yarmouth, and had the reputation in the country to help children who were bewitched. He advised me to put the child by the fire in a blanket, and if I found anything in the blanket with the child, to throw it into the fire. I did so that same night, and there fell out of the blanket a great toad, which ran up and down upon the hearth. I seized the great toad with a pair of tongs, and thrust it into the fire. Thereupon it made a great and horrible noise; and after a space, there was a flashing in the fire like gunpowder, making a noise, like the discharge of a pistol; and after the flashing and noise, the substance of the toad was gone without being consumed in the fire. The next day there came a young woman, a kinswoman of

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the said Amy, and told me that her aunt was in a most deplorable condition, having her face, legs, and thighs, all scorched, and that she was sitting alone in the house in her smock without any fire: and please you, my Lord, after the burning of the said toad, my child recovered, and was well again, and is now still living."

With respect to the two girls named Pacy, — Deborah was so cruelly bewitched, that she could not be brought to the assizes; but Elizabeth appeared in court, and, although deprived of speech, and with her eyes shut, she played many antics, particularly when, "by the direction of the Judge," Amy Duny touched her. Then the father of the girls proved, that he having refused Amy Duny and Rose Cullender some herrings which they asked for*, they were very angry, and, soon after, the girls were taken in a strange way, and spat up large quantities of pins and twopenny nails (which were produced in court), and declared that Amy Duny and Rose Cullender visited them in the shape of a bee and of a mouse, and tormented them from time to time for many weeks. It was further proved, that the two prisoners being taken up under a Justice's warrant as witches, and their persons being examined, Rose Cullender was discovered to have a secret teat, which she said was the effect of a strain from carrying water, but which a witness swore had been lately sucked.

Mr. Serjeant Kelynge, who was either joined in the commission as one of the Judges, or acted as *amicus curiæ*, "declared himself much unsatisfied with this evidence, and thought it not sufficient to convict the prisoners; for, admitting that the children were in truth bewitched, yet," said he, "it can never be applied to the prisoners upon the imagination only of the parties afflicted; for if that might be allowed, no person whatsoever can be in safety, for, perhaps, they might fancy another person who might altogether be innocent in such matters."

To strengthen the case, Dr. Brown, of Norwich, supposed

* Very much like the witch in Macbeth:

"A sailor's wife had chesnuts in her lap,
And mounch'd, and mounch'd, and mounch'd: *Give me*, quoth I."

But here there was no such provoking language as "*Avoint thee, witch!*"

to have deep skill in demonology, was called as an *expert*, and after giving it as his clear opinion that the children were bewitched, added, that "in Denmark there had lately been a great discovery of witches, who used the very same way of afflicting persons by conveying pins into them, with needles and nails; and he thought that the Devil, in such cases, did work upon the bodies of men and women by a natural inundation."

Detection of the imposture.

An experiment was made, by Serjeant Kelynge and several other gentlemen, as to the effect of the witch's touch. Elizabeth Pacy, being conducted to a remote part of the hall, was blindfolded, and in her fit was told that Amy Duny was approaching, when another person touched her hand, — which produced the same effect as the touch of the witch did in court. "Whereupon the gentlemen returned, openly protesting that they did believe the whole transaction of this business was a mere imposture. This put the Court and all persons into a stand."

However, the prosecutors tried to bolster up the case by proof that Rose Cullender, once on a time, being angry because a cart had wrenched the window of her cottage, must, in anger, have bewitched this cart, because it was repeatedly overturned that day, while other carts went smoothly along the road, — and that Amy Duny had been heard to say, "the Devil would not let her rest until she were revenged on one Anne Sandewell, who, about seven or eight years ago, having bought a certain number of geese, was told by Amy Duny that they would all be destroyed, which accordingly came to pass." The witnesses being all examined, — instead of stopping the prosecution and directing an acquittal, Lord Chief Baron Hale summed up in these words; clearly intimating that, in his opinion, the jury were bound to convict: —

Hale's summing up.

"Gentlemen of the jury, I will not repeat the evidence unto you, lest by so doing, I should wrong it on the one side or on the other. Only this I will acquaint you, that you have two things to inquire after: *first*, whether or no these children were bewitched? *secondly*, whether the prisoners at the bar were guilty of it? That there are such creatures as witches, I make no doubt at

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all; for first, the Scriptures have affirmed so much; secondly, the wisdom of all nations hath provided laws against such persons, which is an argument of their confidence of such a crime; and such hath been the judgment of this kingdom, as appears by that act of parliament which hath provided punishments proportionable to the quality of the offence. I entreat you, gentlemen, strictly to examine the evidence which has been laid before you in this weighty case, and I earnestly implore the great God of Heaven to direct you to a right verdict. For to condemn the innocent and to let the guilty go free, are both an abomination unto the Lord."

The jury, having retired for half an hour, returned a verdict of *guilty* against both the prisoners on all the indictments; and the Judge, putting on his black cap, after expatiating upon the enormity of their offence, and declaring his entire satisfaction with the verdict, admonished them to repent, and sentenced them to die.

Execution of the witches.

The bewitched children immediately recovered their speech and their senses, and slept well that night. Next morning, Sir Matthew, much pleased with his achievement, departed for Cambridge, leaving the two unhappy women for execution. They were eagerly pressed to confess, but they died with great constancy, protesting their innocence.*

Hale's motives were most laudable; but he furnishes a memorable instance of the mischiefs originating from superstition. He was afraid of an acquittal or of a pardon, lest countenance should be given to a disbelief in witchcraft, which he considered tantamount to a disbelief in Christianity. The following Sunday he wrote a "Meditation concerning the mercy of God in preserving us from the malice and power of Evil Angels," in which he refers, with extreme complacency, to the trial over which he had presided at Bury St. Edmund's.†

Although, at the present day, we regard this trial as a

* Trial of the Witches at Bury St. Edmund's, 1682; 6 St. Tr. 647—702.

† This "Meditation" was published in the year 1693, with a preface, in which the editor praises it "as an evidence of the judgment of so great, so learned, so profound and sagacious, so cautious, circumspect, and tender a man, in matters of life and death, upon so great deliberation (for he knew by his calendar beforehand what a cause he was to try, and he well knew the notions and sentiments of the age), and, upon so solemn an occasion, to check and correct the *impiety*, the vanity, the self-conceitedness, or baseness of such witch advocates as confidently maintain that there are no witches at all."

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most lamentable exhibition of credulity and inhumanity, I do not know that it at all lowered Hale in public estimation during his own life; but in the middle of the 18th century it was thus censured by Sir Michael Foster: "This great and good man was betrayed, notwithstanding the rectitude of his intentions, into a lamentable mistake, under the strong bias of early prejudice." * The enormous violation of justice then perpetrated has become more revolting as the mists of ignorance, which partially covered it, have been dispersed. How much more should we honour the memory of Hale, if, retaining all his ardent piety, he had anticipated the discovery of Lord Chief Justice Holt, who put an end to witchcraft by directing prosecutions against the parties who pretended to be bewitched, and punishing them as cheats and impostors! †

It would be very agreeable to diversify these painful details with some anecdotes of Hale in private life; but we have none of his "Table Talk," while that of his contemporary Selden is so amusing; and we must be contented with his judgments and his writings. He hardly ever went into society, or entertained company at home. He had no dwelling in London, except his chambers in Serjeants' Inn. Soon after he was made Chief Baron he took a cottage at Acton, where he had for his neighbour the celebrated Richard Baxter —now ejected from his office of King's Chaplain, conferred upon him at the Restoration, but not yet persecuted under the "Conventicle" and "Five Mile" Acts. The worthy nonconformist gives us this interesting account of the manner in which they made each other's acquaintance:—

Hale's intimacy with Baxter.

"We sat next seats together at church many weeks ‡; but neither did he ever speak to me nor I to him. At last, my extraordinary friend, Serjeant Fountain, asked me 'why I did not visit the Lord Chief Baron?' I told him, 'because I had no reason for it, being a stranger to him; and had some against it, viz. that a judge, whose reputation was necessary to the ends of his office, should not be brought within court suspicion or dis-

* Preface to Reports, p. vii.

† See Hathaway's Case, 14 St. Tr. 630. The statutes against witchcraft were not repealed till 9 Geo. II. c. 5. Bl. Com. iv. 61; 3d Institute, 43.

‡ This means the parish church, which Baxter still frequented, although he occasionally preached to a congregation of his own.

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grace, by his familiarity with a person whom the interest and diligence of some prelates had rendered so odious.' The Serjeant answered, 'It is not meet for him to come first to you; I know why I speak it; let me entreat you to go first to him.' In obedience to which request I did it; and so we entered into neighbourly familiarity. I lived then in a small house, but it had a pleasant garden, which the honest landlord had a desire to sell. The Judge had a mind to the house, but he would not meddle with it till he got a stranger to me to come and inquire of me whether I was willing to leave it? I answered, 'I was not only willing but desirous,' and so he bought it, and lived in that poor house till his mortal sickness sent him to the place of his interment." *

A.D. 1668.

It was about this time that Hale, although he had laid down a rule never more to mix with any public affairs, was induced to assist in furthering a plan for bringing about a "comprehension," *i. e.* an extension of the Establishment which should comprehend the Presbyterians, in fulfilment of the Declaration from Breda and the promises made upon the King's restoration. Clarendon, who had been guilty of flagrant perfidy upon this subject, was now in exile; and Sir Orlando Bridgman, who had succeeded him on the woolsack, was friendly to the proposal. The King himself secretly favoured the Papists — his own co-religionists — and he hoped that something to their advantage might arise from his affecting a love of toleration.

He prepares a bill to be presented to parliament for a "comprehension."

There were several conferences held with a view to this "comprehension," the interests of the Church of England being attended to by Dr. Wilkins, Bishop of Chester,— "a man," says Burnet, "of as great a mind, as true a judgment, as eminent virtues, and of as good a soul, as any I ever knew;" and those of the Presbyterians by Baxter, of whom it was often observed, that "if he had lived in the early ages of Christianity he would have been one of the fathers of the Church."

Articles having been, at last, agreed upon, which were substantially the same which Hale, when member for Gloucestershire, had proposed in the Convention Parliament, it was very naturally the wish of both parties that he should be

* Baxter's Works, i. 95.

intrusted to reduce them into the form of a bill to be proposed to the two Houses of Parliament at their next meeting. He readily performed the task; and he had only a few alterations to make in the draught which he had prepared at the time when Clarendon dextrously elevated him to the bench. But the bright prospect was soon overcast. Two powerful parties resisted the design of "comprehension," with equal zeal. The bigoted clergy "thought it below the dignity of the Church to alter laws, and change settlements, for the sake of some whom they esteemed *schismatics*: they also believed it was better to keep them out of the Church than bring them into it, since a faction upon that would arise in the Church which they thought might be more dangerous than the schism itself was."* The Popish party likewise became alarmed at the approaching union of all orthodox Protestants, and were eager that the Dissenters should be still oppressed, so that they might be driven to consent to an *indulgence* which would extend to the professors of the ancient faith. Accordingly, when the House of Commons met, leave was refused to bring in the bill; and, on the contrary, measures were brought forward against *conventicles*, and against *occasional conformity*, which greatly aggravated the sufferings of the Presbyterians, — while a declaration of indulgence sheltered the Roman Catholics, till it excited such a tumult in the nation that the King was obliged to recall it. The firm friendship so contracted continued to subsist between Dr. Wilkins and the Chief Baron, who, "having much business and little time to spare, did, to enjoy the other the more, what he had scarce ever done before; he went sometimes to dine with him, and though he lived in great friendship with some other eminent clergymen, yet there was an intimacy and freedom in his converse with Bishop Wilkins that was singular to him alone." †

Hale's intimacy with Wilkins, Bishop of Chester.

While caressed by Wilkins, Barrow, Tillotson, and Stillingfleet, the great ornaments of the Establishment, Hale kept up, as long as he could, his intimacy with the venerable leader of the Nonconformists, and, if the law had permitted,

* Burnet, p. 25. † Ibid. p. 24.

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would have been delighted to reap the benefit of his ministrations: —

Baxter's account of Hale's behaviour to him.

"When I went," says Baxter, "out of the house in which he succeeded me, I went into a greater, over against the church door. The town having great need of help for their souls, I preached between the public sermons in my house, taking the people with me to the church (to common prayer and sermon) morning and evening. The Judge told me he thought my course did the church much service, and would carry it so respectfully to me at my door that all the people might perceive his approbation. But Dr. Reeves could not bear it, and complained against me, and the Bishop of London caused one Mr. Rosse and Mr. Philips, two justices of the peace, to send warrants to apprehend me. I told the Judge of the warrants, but asked him no counsel, nor did he give me any, but with tears showed his sorrow, the only time that I ever saw him weep. So I was sent to the common gaol for six months."

After giving an account of his being discharged upon a *habeas corpus*, the magistrates having exceeded the law in his commitment, he goes on to say, "But this imprisonment brought me the great loss of converse with Judge Hale; for the Parliament, in the next act against conventicles, put into it divers clauses suited to my case, by which I was obliged to go dwell in another county, and to forsake both London and my former habitation." *

Hale shunned all private intercourse with the profligate Lord Chancellor Shaftesbury, but was on the most friendly terms with Lord Chancellor Nottingham, who afterwards wrote a beautiful character of him, which is introduced into his Life by Bishop Burnet. He still not unfrequently was called in as assessor in the Court of Chancery; and the principles he laid down and illustrated on these occasions materially assisted the FATHER OF EQUITY in converting into a science this great department of our juridical system.

During four years and a half he had been the honoured Chief Justice of England; and, although he was well stricken in years, the public still expected long to enjoy the benefit of his services. By early rising, by exercise, and by temperance,

* Baxter's Works, i. 105—107.

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notwithstanding his constant application to business and study, (with the exception of one severe illness with which he was visited about a year after he was made Chief Baron)*, he had enjoyed uninterupted good health; and his constitution seemed unimpaired. But in the autumn of the year 1675 he was struck by a violent inflammatory attack, which, in two days, endangered his life, and from which he never rallied. In the following Michaelmas Term he found himself so reduced and enfeebled, that he could hardly, though supported by his servants, walk up Westminster Hall, or sit out the arguments at the bar, — which now seemed to him to be dull, flat, and unprofitable.

Hale's health fails.

He cared little about the emoluments or the consequence of his office; and, although there was in those days no retiring pension to fall back upon, he determined to resign. But, as he never took any important step in a hurry, he composed a MEDITATION on the present aspect of his affairs: —

His "Meditation" about resigning.

"1st. If I consider the business of my profession, whether as an advocate or as a judge, it is true I do acknowledge, by the institution of Almighty God and the dispensation of His providence, I am bound to industry and fidelity in it. And it is an act of obedience unto His will, it carries with it something of religious duty, and I may and do take comfort in it, and expect a reward of my obedience to Him and the good that I do to mankind therein from the bounty and beneficence and promise of Almighty God; and it is true also, that without such employments civil societies cannot be supported, and great good redounds to mankind from them; and in these respects, the conscience of my own industry, fidelity, and integrity in them, is a great comfort and satisfaction to me. But yet I must say, concerning these employments considered simply in themselves, they are very full of cares, anxieties, and perturbations. 2dly. That though they are beneficial to others, yet they are of the least benefit to him that is employed in them. 3dly. They do necessarily involve the party whose office it is in great dangers, difficulties, and calumnies. 4thly. That they only serve for the meridian of this life, which is short and uncertain. 5thly. That though it be my duty faithfully to serve in them while

* "The chiefest occasion of my sickness I could visibly impute but to a little wet taken in my head in my journey to London." On his recovery, he wrote a very pious, but very prolix and prosy, "Meditation," which may be seen at full length in Williams's Life of Hale, p. 88.

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I am called to them, and till I am duly called from them, yet they are great consumers of that little time we have here; which, as it seems to me, might be better spent in a pious contemplative life, and a due provision for eternity. I do not know a better temporal employment than Martha had in testifying her love and duty to our Saviour by making provision for him; yet our Lord tells her, 'That though she was troubled about many things, there was only one thing necessary, and Mary had chosen the better part.'"

He solicits his "writ of ease."

His infirmities increased upon him, and a severe asthma afflicted him night and day. Baxter, describing his appearance at this time, says, —

"He had death in his lapsed countenance, flesh, and strength." *

Perceiving that his days were numbered, he intimated a resolution to resign his office of Chief Justice: —

"This drew upon him the importunities of all his friends, and the clamour of the whole town, to divert him from it; but all was to no purpose. So he made applications to his Majesty for his '*writ of ease*,' which the King was very unwilling to grant him, offering 'to let him hold his place still, he doing what business he could in his chamber;' but he said, 'he could not with a good conscience continue in it, since he was no longer able to discharge the duty belonging to it.' Such was the general satisfaction which all the kingdom received by his excellent administration of justice, that the King, though he could not well *deny* his request, yet he *deferred* the granting of it as long as was possible." †

He several times made the same application to Lord Nottingham, the Chancellor, but was told by him still to hope for the restoration of his health, and was reminded that his predecessor, Lord Coke, had proved himself capable of serving his country at a much more advanced period of life. The reluctance of the Government to accept his resignation proceeded not only from a sense of his merits, but from the great difficulty which existed at that time of replacing him by a person who might be able to support the arbitrary measures which it was intended hereafter to bring forward. Jeffreys was still a flaming patriot, declaring that "he never should be bought;" and Scroggs's life was so scandalous, that Charles and his ministers were not yet sufficiently regardless

* Works, by Thirlwall, i. 107 † Burnet, p. 32.

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of public opinion to venture on putting him at the head of the criminal law, although they were about to make him a Puisne Judge of the Common Pleas.*

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Hale at last, with his own hand, wrote a resignation of his office, caused it to be duly enrolled in Chancery, and delivered the original into the hands of the Lord Chancellor†, saying that "he made this instrument for two reasons — to show the world his own free concurrence to his removal, and to obviate a scruple whether the Chief Justice of the King's Bench, being placed by writ, was removable like the other judges who were appointed by patent during pleasure. The Chancellor, finding the resignation an accomplished fact, offered no farther resistance, and conducted him to the King, "who parted from him with great grâce, wishing him most heartily the return of his health, and assuring him 'that he would still look upon him as one of his judges, and have recourse to his advice when his health would permit; and, in the mean time, would continue his pension during his life.'"‡

He retires from the bench, Feb. 21.

His last interview with the King.

An obscure person, of the name of Raynsford, who was expected to give little trouble, and whom it would be easy to get rid of, having, in the dearth of fit men, been selected

Address of Lord Chancellor Notting-

* Dugd. Or. Jur. 118.

† "Omnibus Christi Fidelibus ad quos præsens Scriptura pervenerit, MATTHEUS HALE, Miles, Capitalis Justiciarius Domini Regis ad placita coram ipso rege tenenda assignatus, salutem in Domino sempiternam. Noveritis me præfatum MATTHEUM HALE, Militem, jam senem factum, et variis corporis mei senilis morbis et infirmitatibus diu laborantem et adhuc detentum, hâc chartâ meâ resignare et sursum reddere Serenissimo Domino nostro CAROLO SECUNDO, Dei gratiâ Angliæ, Scotiæ, Franciæ, et Hiberniæ Regi, Fidei Defensori, &c., prædictum officium Capitalis Justiciarii ad placita coram ipso Rege tenenda, humillime petens quod hoc scriptum irrotuletur de recordo. In cujus rei testimonium huic chartæ meæ resignationis sigillum meum apposui. Dat' vicesimo primo die Februarii, anno regni dict. Dom. Regis nunc vicesimo octavo."

I once witnessed a similar ceremony in the year 1834, when the venerable Sir John Bayley executed a resignation of his office of a Baron of the Exchequer in the presence of Lord Chancellor Brougham.

‡ Burnet, p. 33. "Pension" means *salary*. As yet there was no Civil List; the whole of the public revenue came into the Exchequer, and the King paid the Judges out of it as he did his menial servants. Sometimes extraordinary grants in time of war were put under the management of parliamentary commissioners, but all salaries or pensions were supposed to come out of the King's own pocket. A retired allowance was a mark of very extraordinary favour. On this occasion Hale wished his to be during pleasure; but Charles, seeing that the object of his bounty could not live many months, insisted upon its being for life.

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as Chief Justice of the King's Bench, the Lord Chancellor said, at his installation, "*Onerosum est succedere bono principi,* and you will find it so that are to succeed such a Chief Justice; of so indefatigable an industry, so invincible a patience, so exemplary an integrity, and so magnanimous a contempt of worldly things, without which no man can be truly great; and, to all this, a man that was so absolutely a master of the science of the law, and even of the most abstruse and hidden parts of it, that one may truly say of his knowledge in the law what St. Austin said of St. Hierome's knowledge in divinity — *Quod Hieronimus nescivit nullus mortalium unquam scivit.*" The new Chief Justice, though not very original or sublime in his rhetorical figures, was determined not to be outdone in eulogy: "It doth very much trouble me," said he, "that I, who, in comparison of him, am but like a candle lighted in the sunshine, or like a glow-worm at mid-day, should succeed so great a person, that is and will be so eminently famous to all posterity."

CHAPTER XVIII.

CONCLUSION OF THE LIFE OF CHIEF JUSTICE HALE.

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HALE was now to bid a final adieu to London. He had resolved to proceed to Alderley, his friends telling him that his constitution might yet be invigorated by his native air; and he himself being resolved here to prepare himself, in seclusion, for the great change which he knew must be at hand. He took an affectionate leave of his officers and attendants, advising them to see for themselves, as their employment was determined; giving considerable presents to such as were in want, and leaving a token with each of them. His friends all flocked round to take an affectionate leave of him; and never, when seated on his tribunal, the "beheld of all beholders," had he received homage so sincere or so touching.

Hale bids a final adieu to London. Feb. 1676.

He travelled, by easy journeys, into Gloucestershire; and, in the beginning of March, he reached the village where his eyes had first beheld the light, and where his ashes were to repose. The scenes of his infancy, and the recollection of his youthful sports, for a while revived him; and, after saying prayers in the church, and spending some time in private devotion, he had spirits to translate a passage from Seneca's THYESTES, which he thought particularly applicable to his present circumstances.* Sir Matthew was not unfrequently given to rhyme, but, considering that he was a man of classical

His arrival at Alderley.

Hale as a poet.

* "Stet, quicunque volet, potens,
Aulæ culmine lubrico:
Me dulcis saturet quies.
Obscuro positus loco,
Leni perfruar otio:
Nullis nota Quiritibus
Ætas per tacitum fluat.
Sic cum transierint mei
Nullo cum strepitu dies,
Plebeius moriar senex.
Illi mors gravis incubat,
Qui, notus nimis omnibus,
Ignotus moritur sibi." — *Thyestes*, act ii.

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education, and that he must have listened to the versification of Dryden, it is astounding to find his lines not only so prosaic, but so rough, lame, mean, and untuneable. They are such as no rhyming mechanic or waiting-maid would now produce. But, — compared with his usual failure, — on this occasion he really seems to have been inspired by the genius of the place; and I willingly copy his translation, to show that a great lawyer may have some remote notion of poetry: —

"Let him that *will*, ascend the tottering seat
Of courtly grandeur, and become as great
As are his mounting wishes: as for me,
Let sweet *repose* and *rest* my portion be.
Give *me* some mean, obscure recess, — a sphere
Out of the road of business, or the fear
Of falling lower; where I secretly may
Myself and dear retirement still enjoy.
Let not my life or name be known unto
The grandees of the time, toss'd to and fro
By censures or applause; but let my age
Slide gently by; not overthwart the stage
Of public action, — unheard, unseen,
And unconcern'd, as if I ne'er had been.
And thus, while I shall pass my silent days
In shady privacy, free from the noise *
And bustles of the mad world, then shall I,
A good old innocent plebeian, die.
Death is a mere surprise, a very snare,
To him that makes it his life's greatest care
To be a public pageant; known to all,
But, unacquainted with himself, doth fall."

His last illness.

In a few days his malady returned with aggravation, and his breathing became so bad, that he was never able to lie down in his bed, being supported upon it, even in the night, by pillows. But he bore his sufferings with exemplary patience; and any intervals of ease which he enjoyed, he devoted to piety, and to attempts to benefit his fellow-creatures.

It might have been expected that he would have revised, and given to the world, some of the invaluable law treatises which he had composed; but he entirely neglected

* In the Gloucestershire dialect this word is pronounced *naize*, as "enjoy" is pronounced "enjay." Having many years attended the Quarter Sessions as well as the Assizes at Gloucester, I made considerable progress in acquiring the lingo of the county. The judge's name is there pronounced Eel, as they never aspirate *h* at the beginning of a word, and they always change *a* into *ee*. Thus Mr. Bloxham, the clerk of the peace, born near Alderley, in calling the jury, when he came to "David Hale of the same place, baker," hollooed out, "Deevid Eel, of the seem pleece, beeker." I hope it is understood that I praise these verses of a Gloucestershire poet only in comparison with his other metrical effusions.

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them. Indeed, he had never shown any desire to be known as a juridical writer, although he was by no means without the ambition of authorship. But he wished to be admired as a philosopher and a divine. In 1673, he had printed an "Essay touching the Gravitation and Non-gravitation of Fluid Bodies;" and, two years after, a treatise entitled "DIFFICILES NUGÆ; or, Observations touching the Torricellian Experiment, and the various Solutions of the same, especially touching the Weight and Elasticity of the Air." There had likewise been published, with his sanction, while he was on the bench, two volumes of "CONTEMPLATIONS," consisting of sermons, homilies, or pious ruminations, written by him on the evenings of the Lord's Day. Now he sent to the press the first volume of a work on which he had been engaged for seven years, entitled "THE ORIGINATION OF MANKIND." His object was to refute atheists, and to support the Mosaic account of the creation. But before it was published he was beyond the reach of human praise or censure: —

His philosophical publications.

The "Origination of Mankind."

"As the winter came on, he saw with great joy his deliverance approaching; for besides his being weary of the world, and his longings for the blessedness of another state, his pains increased so on him, that no patience inferior to his could have borne them without a great uneasiness of mind; yet he expressed to the last such submission to the will of God, and so equal a temper under them, that it was visible then what mighty effects his philosophy and Christianity had on him in supporting him under such a heavy load. Not long before his death the minister told him 'there was to be a sacrament next Sunday at church, but he believed he could not come and partake with the rest; therefore he would give it to him in his own house.' But he answered, 'No, his Heavenly Father had prepared a feast for him, and he would go to his Father's house to partake of it.' So he made himself be carried thither in his chair, where he received the sacrament on his knees with great devotion; which, it may be supposed, was the greater because he apprehended it was to be his last, and so took it as his *viaticum* and provision for his journey." *

His last communion.

Such was his reputation for sanctity, that some expected that he would be translated to a better world without tasting death. He knew well that he could only attain to perfect

* Burnet, p. 35.

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blessedness through the resurrection of the just, but even he believed that the time of his death was mysteriously revealed to him, for in the middle of November he declared that "if he did not die next Friday week, he should live a month longer." The day he named fell out to be the 25th of November; he did not die on that day, although grievously sick, and he languished on till the morning of the 25th of December, Christmas-day, when, as it was supposed, by the special favour of Heaven, to recompense him for the war he had carried on against evil spirits, he expired at cockcrow:—

His death.

> "Then, they say, no spirit dares stir abroad;
> No fairy takes, nor witch hath power to charm,—
> So hallow'd and so gracious is the time."

He continued to enjoy the free use of his reason to the last moment, a blessing which he had often earnestly prayed for during his sickness; and when his voice was so sunk that he could not be heard, those who stood by might perceive, by the almost constant lifting up of his eyes and hands, that he was still aspiring towards that blessed state of which he was speedily to be possessed.

His funeral.

He used to disapprove of the custom of burying in churches as superstitious, saying, "Churches are for the living, churchyards for the dead." Accordingly, on his last return from London, he had pointed out a spot for his own interment, near the grave of his deceased wife; and there his remains were deposited on the 4th day of January following. The intention was that the ceremony should be very private, but, in addition to his own relatives and servants, many rustics attended from the surrounding villages, for they regarded the deceased as a Saint, and they thought there was virtue in touching his coffin. In Popish times, miracles would have been worked at his tomb, and he would have been canonised as "St. Matthew of Alderley."

The only ecclesiastical honour conferred upon him was a funeral sermon, by the vicar of Alderley, from Isaiah, lvii. 1. "The righteous perisheth, and no man layeth it to heart: and merciful men are taken away, none considering that the righteous is taken away from the evil to come,"—in which the preacher drew a glowing picture of the virtues of the departed Chief Justice, and expressed a pious confidence "that, now

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beyond the temptations and troubles of this wicked world, in which the Devil and his angels are constantly plotting destruction to the bodies and souls of men, having a powerful Advocate on his side, he might with pious confidence attend the last assize, and expect a sentence of acquittal from the great and merciful Judge of mankind."

Sir Matthew himself had prepared the following simple epitaph, which was inscribed on a plain marble monument erected to his memory: —

His epitaph.

"HIC INHUMATUR CORPUS
MATTHEI HALE, MILITIS;
ROBERTI HALE ET JOANNÆ
UXORIS EJUS FILII UNICI,
NATI IN HOC PAROCHIA DE ALDERLEY,
PRIMO DIE NOVEMBRIS,
A.D. 1609.
DENATI VERO IBIDEM
VICESIMO QUINTO DIE DECEMBRIS,
A.D. 1676.
ÆTATIS SUÆ LXVII."

In the list of our great magistrates there is no name more venerated than Hale, and I can add nothing to exalt his judicial reputation.

He mixed so little in politics, that he is hardly to be enumerated among our statesmen; but in revolutionary times he must be allowed to have acted a moderate, consistent, and meritorious part.

Hale as a jurist.

As a jurist, I doubt whether sufficient justice has yet been done to his memory. Coke had as much professional knowledge, but he considered what he had amassed as a mere *congeries* of arbitrary rules, without principle, system, or dependence. Hale cultivated law as a science, — having distinct objects to which it might or might not be adapted, — admitting and requiring alterations and amendments, according to the varying circumstances of society. He had a fine head for analysis, and, with a due reverence for existing institutions, he recollected the maxim, that "Time is the greatest innovator." Hence he beautifully methodised the code which he found to be in force, and he gave invaluable instructions as to the manner in which it might be improved. We have from Bishop Burnet the following interesting account of his first attempt in this direction, which shows that the subject had long occupied his thoughts: —

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"Some complaining to him that 'they looked on the common law as a study that could not be brought into a scheme, nor formed into a rational science, by reason of the indigestedness of it, and the multiplicity of the cases in it which rendered it very hard to be understood;' he said, 'he was not of their mind,' and so, quickly after, he drew with his own hand a scheme of the whole order and parts of it in a large sheet of paper, to the great satisfaction of those to whom he sent it. Upon this hint some pressed him to compile a body of the English law. But he said, 'as it was a great and noble design which would be of vast advantage to the nation, so it was too much for a private man to undertake; it was not to be entered upon but by the command of a prince, and with the communicated endeavours of some of the most eminent of the profession.'" *

He actually did publish an "Analysis of the Civil part of our Law," which supplied Sir William Blackstone with the plan of his immortal COMMENTARIES.† He likewise left behind him a Tract entitled "Considerations touching the Amendment of the Law,"— to be studied by all law reformers, and by all who think that the law should remain unchanged from generation to generation. Having first pointed out the evils arising from "overhaste and forwardness," he proceeds to remark on "the overtenacious holding of laws, notwithstanding apparent necessity for, and safety in, the change:"—

"We must remember," says he, "that laws were not made for their own sakes, but for the sake of those who were to be guided by them; and though it is true that they are and ought to be sacred, yet if they be or are become unuseful for their end, they must either be amended, if it may be, or new laws be substituted, and the old repealed, so it be done regularly, deliberately, and so far forth only as the exigence or convenience justly demands it; and in this respect the saying is true, *Salus populi suprema lex esto.* He that thinks a state can be exactly steered by the same laws in every kind as it was two or three hundred years ago, may as well imagine that the clothes that fitted him when a child should serve him when he was grown a man. The matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies, change in a long tract of time, and so must their laws in some measure be changed, or they will

* Burnet, p. 39.

† Pronounced by Hargrave "a superstructure raised on the foundation of Lord Hale's previous Digest." (Preface to Law Tracts, xii.)

not be useful for their state and condition; and besides all this, time is the wisest thing under heaven. These very laws, which at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, mercantile arts, architecture, and building, and philosophy itself, secure new advantages and discoveries by time and experience, so much more do laws which concern the manners and customs of men." *

Upon these admirable principles he proceeded when at the head of the Commission for the Amendment of the Law under Cromwell; and on his suggestions chiefly are founded the ameliorations of our code which have illustrated the reigns of William IV. and Queen Victoria. We have not yet a Register of Deeds, but this is not the fault of Hale, for he wrote a book on purpose to recommend it, — in which he triumphantly shows the objection which prevents its adoption — that it would disclose the incumbrances with which estates are charged — to be one of its greatest advantages.

His judicial writings.

Having completed his "Common-place Book," he, in the early part of his career, wrote many separate law treatises. The one upon which he bestowed most labour, and which has been most frequently quoted, is his "HISTORY OF THE PLEAS OF THE CROWN," which is a complete digest of the criminal law as it existed in his day. His "HISTORY OF THE COMMON LAW OF ENGLAND" may be considered a sketch of what might have been expanded into a complete Civil Code. All his MSS. and records he left by his will to the library of Lincoln's Inn, pronouncing them "a rare collection, — a treasure worth having and keeping, — and not fit for every man's view." From this repository the late Mr. Hargrave published, to the great benefit of the community, two very valuable Tracts by Hale, — "DE PORTUBUS MARIS," and "ON THE JURISDICTION OF THE LORDS' HOUSE OF PARLIAMENT," — both of which show a familiarity with our legal antiquities, and powers of distribution and illustration, worthy of the highest admiration.

But he only valued himself for his success in poetry, — in philosophy, — and in divinity; and such is the weakness of human nature, that he evidently thought he had secured to himself a lasting reputation in these departments of genius

* Published by Hargrave in his Law Tracts.

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and learning.* A collection of hymns, written by him, was published; and Bishop Burnet, who says "he had great vivacity in his fancy, as may appear from his inclination to poetry," praises a Christmas Carol, which thus begins:—

Specimen of his poetry commended by Burnet.

"Blessed Creator! who before the birth
Of time, or e'er the pillars of the earth
Were fixt or form'd, didst lay that great design
Of man's redemption, and did'st define
In thine eternal councils all the scene
Of that stupendous business, and when
It shall appear, and though the very day
Of its epiphany concealed lay
Within thy mind, yet thou wer't pleas'd to show
Some glimpses of it unto men below." †

His doctrines respecting the maintenance of the poor.

While living in retirement, shortly before the Restoration, he wrote a pamphlet on the "Maintenance of the Poor," in which, in entire ignorance of the elements of political economy, and amiably led away by *communist* doctrines, he proposes that in every parish there should be an association of operatives, who, being supplied with materials, should carry on some manufacture for their common benefit. Refusal to work he would punish, upon a conviction before magistrates; but he is as silent as Louis Blanc, in our day, with respect to the necessary stimulus to exertion where the listless and the laborious were to share equally; and he says not a word about the requisite supply of capital, or the demand for his manufactured produce.‡

His experiments in natural philosophy.

In his latter years he was smitten by the rage for philosophical discovery which prevailed among the founders of the Royal Society. At Acton he had a laboratory, and he engaged

* Roger North says, "It is most certain his vanity was excessive; which grew out of a self-conversation, and being little abroad. But when he was off from the seat of justice and at home, his conversation was with none but flatterers. He was allowed on all hands to be the most profound lawyer of his time; and he knew it; but that did not serve him, but he would be also a profound philosopher, naturalist, poet, and divine, and measured his abilities in all these by the scale of his learning in the law, which he knew how to value; and if he postponed any, it was the law to all the rest; for he was so bizarr in his dispositions that he almost suppressed his collections and writings of the law, which were a treasure, and, being published, would have been a monument of him beyond the power of marble."—(i. 115.) But Roger confesses that he was influenced by his brother's envy of Hale:—"He was very much concerned to see the generality, both gentle and simple, lawyers and laymen, idolise him, as if there had never been such a miracle of justice since Adam."—(i. 119.)

† I must admit that this rather justifies Roger North's criticism:—"He published much in speculative devotion, part prose, part verse; and the latter hobbled so near the style of the other as to be distinguished chiefly by being worse."

‡ See an analysis of this pamphlet in Sir Frederick Morton Eden's History of the Poor Laws, i. 214.

in long courses of chemical experiments. The result of these he from time to time gave to the world, in pamphlets, which called forth eulogies from sycophants who surrounded him, but made the judicious grieve. His book on "THE ORIGINATION OF MANKIND" has the merit of containing the refutation of atheism from the mechanism of a watch, of which Paley has availed himself. After supposing one to have been presented in an assembly of Greek philosophers, and giving their various unsatisfactory explanations of its structure and movements, he finally introduces the maker, and puts this speech into his mouth: —

"Gentlemen, you have discovered very much excellency of invention touching this piece of work that is before you, but you are all miserably mistaken; for it was I that made this watch and brought it hither, and I will show you how I made it. I wrought the spring, and the fasee, and the wheels, and the ballance, and the case, and table; I fitted them one to another, and placed these several axes that are to direct the motions of the index to discover the hour of the day, of the figure that discovers the phases of the moon, and the other various motions that you see."

But his speculations about the manner in which the heavens and the earth were created, and his geological explanation of the effects of Noah's flood, are by no means edifying.* His "CONTEMPLATIONS," and other devotional writings, have passed through many editions, and, I doubt not, have done much good; but I believe that they acquired their celebrity from being the productions of a lawyer of high station, and that if they had come from an ecclesiastic, whether Churchman or Dissenter, they would have attracted little notice. Even Burnet says "they are not so contracted as it is very likely he would have writ them if he had been more at leisure to have brought his thoughts into a narrower compass and fewer words."

His Letters of Advice to his children and grandchildren.

Of all his writings the most popular are his "LETTERS OF ADVICE TO HIS SONS AND HIS GRANDCHILDREN." They are certainly very moral, and may be perused with much advantage; but I must admit that they are very dull and un-

* This publication seems to have had no success. Roger North says that it is "very remarkable for a childish ignorance of the subject, and that scarce any one ever read or will read it."

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attractive, and the fashion of using them as a text-book for domestic education, I am sorry to say, has made the hero of this memoir to be regarded as a *great bore* by the rising generation. Thus he addresses his granddaughter *Anne*, whom he describes as "of a sanguine but melancholy complexion," and his granddaughters *Mary* and *Frances*, who were, it seems, "of a sanguine and choleric complexion:"—

His notions of female education.

"I would have you learn all points of good housewifery, and practise it as there shall be occasion; as spinning of linen, the ordering of dairies, and to see to the dressing of meal, salting and dressing of meat, brewing and baking, and to understand the common prices of corn, meat, malt, wool, butter, cheese, and all other household provisions; and to see and know what stores of all things necessary for the house are in readiness, what and when more are to be provided; to have the price of linen, cloths, stuffs, and woollen cloth for your necessary use and the use of a family; to cast about to provide all things at the best hand; to take and keep account of all things; to know the condition of your poultry about the house, for it is no discredit to a woman to be a hen-housewife; to cast about how to order your clothes with the most frugality, to mend them when they want, and to buy but when it is necessary, and with ready money; to love to keep at home. A good wife is a portion of herself, but an idle or expensive wife is most times an ill bargain, though she bring a great portion." *

Burnet says, "he neglected the study of the tongues;" he tells us that he had entirely forgotten his Greek, and I presume that he avoided all dramatic writings in English as profane; but it is wonderful that his familiar acquaintance with the authorised translation of the Bible (that well of English undefiled) did not make his style more nervous and more harmonious. As a writer, however, he pleased the late Lord Ellenborough, who said "he was as competent to express as he was able to conceive." †

His religion tinged with superstition.

Above all, he was reverenced in his own time, and has been so ever since, for the example he set of spotless purity and of genuine piety, although it must be confessed that in his ascetic life he fled from social duties, and that he was not

* Hannah More, in her "Hints towards the Character of a Princess," recommends "the occasionally committing to memory a rule of conduct from Sir Matthew Hale." I do not know whether she had the above admonition in her eye.

† 5 East, 17.

entirely free from superstition. He gravely narrates that he was led to the strict observance of the Sabbath-day because, once profaning it by riding a journey, his horse was supernaturally lamed *; and he always retained his puritanical dislike to changes of posture during divine service, and even to bowing at the name of Jesus.†

His dress.

He was likewise coxcombical in his own way. "His habit," says Baxter, "was so coarse and plain, that I, who am thought guilty of a culpable neglect therein, have been bold to desire him to lay aside some things which seemed too homely." ‡ Then, although he would have no visiting intercourse with the great and the learned, he invited his poorest neighbours to dinner, and made them sit at his own table. He thus rendered his house very disagreeable to his children, who might have turned out well if better society and suitable amusements had been provided for them at home. "All his sons died in the sink of lewdness and debauchery; and if he was to blame in their education, it was by too much rigour rather than of liberty."§

His disregard of money.

His style of living by no means proceeded from an avaricious or miserly disposition. "He did not take the profits that he might have had by his practice, for in common cases, when those who came to ask his counsel gave him a piece, he used to give back the half, and to make ten shillings his fee in ordinary matters that did not require much time or

* Baxter, in his Preface to "Gouge's Surest and Safest Way of Thriving," 8vo. 1676, says "The Lord Hale hath told me how the strange providences of God, in laming and disabling his horses, and other impeditions in a journey towards London for worldly advantages, did convince him and engage him ever after to spend the day as he hath done."

† Baxter says, "His behaviour in the church was *conformable* but *prudent*," and describes his innocent contrivances to satisfy his conscience without violating the Rubric. — (Relig. Baxter, part iii. p. 181.) Although we must regret that he was so narrow-minded on such points, it is creditable to him that he did not — like most Dissenters who, on their rising in the world, have *conformed* — go over furiously to the high-Church party, and persecute his former co-religionists.

‡ Unconscious that he himself tried to attract notice and gain distinction by peculiarity of dress, he rebuked any symptoms of this passion in others. He was particularly severe on attorneys who wore swords; and he expressed high displeasure at the young barristers who wore periwigs, which were then beginning to be fashionable, — *apprentices* having hitherto appeared in their natural long locks, and *serjeants* being adorned with the *coif* or black velvet night-cap. Burnet, p. 52.

§ North's Life of Guilford, i. 117.

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study.* He often acted as an arbitrator, but would never accept any fee for his pains, — saying, "In these cases I am made a judge, and a judge ought to take no money." If they told him that he lost much of his time in considering their business, and so ought to be acknowledged for it, he asked "Can I spend my time better than to make people friends? Must I have no time allowed me to do good in?" He regularly set apart a tenth part of his gains for the poor, and laid out large sums in charity besides. Accordingly, notwithstanding his extensive business at the bar, and long tenure of office, the whole increase of his estate was from 100*l.* to 900*l.* a year, and this arose chiefly from a large legacy left to him by his friend Selden.†

Notions in the reign of Charles II. about knowingly passing bad money.

His biographers add a proof of his extreme scrupulousness, which gives us a strange notion of the times in which such conduct was thought to deserve special praise. "Another remarkable instance," says a bishop, who has not the arrogance to say he imitated him, "of his justice and goodness was, that when he found ill-money had been put into his hands, he would never suffer it to be vented again, for he thought it was no excuse for him to put false money in other people's hands because some had put it into his. A great heap of this he had gathered together, for many had so abused his goodness as to mix base money among the fees that were given him."‡

Sir Matthew Hale was a handsome man, with a strong constitution, which he preserved by short meals and always rising from table with an appetite. I suspect, however, that he indulged to great excess in the use of tobacco, under pretence that, from some peculiarity of constitution, it was necessary to him. Having exhorted his grandchildren to shun

* At this time the client consulted the barrister in person, and paid him the *honorarium* without the intervention of attorney or clerk.

† He showed his disinterestedness as one of the executors of this extraordinary man, who had, by his will, left his noble library of 8000 volumes and many costly MSS. to the University of Oxford, but, taking offence with that learned body because he was refused the loan of a book without giving security for it, had, by a codicil, left the whole to his executors. The executors, thinking this a mere temporary ebullition of spleen, carried into effect the original design.—Ath. Ox. i. pp. xxxvii, xxxviii.

‡ This horde was at last seized by thieves, who broke into his house, and thought they had gained a great prize. They probably did not scruple to circulate it, as it had belonged to a Saint.

this pernicious plant, he says to them, "Herein your grandfather's practice must not be an example to you, nor to any else that is not of his complexion, government, and prudent ordering of himself; for your grandfather hath ever been of a cold complexion and constitution, and therefore tobacco hath been his physic, and a great preservative of his health. But your constitutions are hot, dry, and choleric, and it is hurtful for you." *

His first wife was a daughter of Sir Henry Moore, of Faly, in Berkshire. By her he had ten children, all of whom he outlived except his eldest daughter and his youngest son. When pretty far advanced in life, having been some time a widower, he married the daughter of Mr. Joseph Bishop, of Faly, by whom he had no issue. Roger North says that "she was his own servant maid, and that, for excuse, he said 'There is no wisdom below the girdle.'" † Baxter charitably observes, "Some made it a scandal; but his wisdom chose it for his convenience, that in his age he married a woman of no estate, suitable to his disposition, to be to him as a nurse. This good man more regarded his own daily comfort than man's thoughts and talk." ‡ The arrangement turned out well, and he speaks affectionately and respectfully of her, both in his will and in his advice to his grandchildren, — whom he committed to her care. His two wives.

The estate of Alderley is still in the possession of a lineal descendant of Sir Matthew Hale. I remember that this gentleman served the office of High Sheriff for the county of Gloucester when I went the Oxford Circuit, and that he was treated with peculiar respect by the Judges and the bar, from our profound veneration for the memory of his illustrious ancestor. His representatives.

In writing this memoir, it has been painful to me, in the impartial discharge of my duty, to impute a few errors and defects to him whose infallibility and absolute perfection are considered by many to be essential to the cause of true religion; but I have pleasure in concluding with a sketch of his character, drawn by one who was intimately acquainted

* Page 159.
† Life of North, p. 116.
‡ Relig. Baxter, part iii. p. 176.

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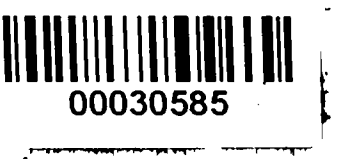
with him for many years, and who may be confidently relied upon both for discernment and sincerity. Richard Baxter, with a small pecuniary legacy left him as a token of regard by his old friend, purchased a copy of the great Cambridge Bible, and prefixed to it a print of the Judge, with the following encomium:—

Sketch of his character by Baxter.

"Sir Matthew Hale, that unwearied student, that prudent man, that solid philosopher, that famous lawyer, that pillar and basis of justice—(who would not have done an unjust act for any worldly price or motive),—the ornament of his Majesty's government, and honour of England, the highest faculty of the soul of Westminster Hall, and pattern to all the reverend and honourable Judges; that goodly, serious, practical Christian, the lover of goodness and all good men; a lamenter of the clergy's selfishness, and unfaithfulness, and discord, and the sad divisions following hereupon; an earnest desirer of their reformation, concord, and the Church's peace, and of a reformed Act of Uniformity as the best and necessary means thereto; that great contemner of the riches, pomp, and vanity of the world; that pattern of honest plainness and humility, who, while he fled from the honours that pursued him, was yet Lord Chief Justice of the King's Bench, after his long being Lord Chief Baron of the Exchequer; living and dying, entering on, using, and voluntarily surrounding his place of judicature with the most universal love, and honour, and praise, that ever did English subject in this age, or any that just history doth record."

END OF THE FIRST VOLUME.

LONDON:
SPOTTISWOODES and SHAW,
New-street-Square.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